Saskatchewan
Education

Minister's Advisory Board on Independent Schools

Final Report to the Minister of Education

Volume I

November 1990

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Minister's Advisory Board on Independent Schools

Final Report to the Minister of Education

Volume I

Saskatchewan Education

November 1990

Letter of Transmittal

October 15, 1990

The Honourable Ray Meiklejohn
Minister of Education
Province of Saskatchewan

Dear Mr. Meiklejohn,

As a result of nearly a year's deliberations, the Advisory Board is very pleased to submit its Final Report to you.

Saskatchewan has long had a national reputation for the development of educational policy through the collaborative process. As a further example of this collaborative and consultative process, the work of this Advisory Board represents and reflects the interests of the broad range of partners in Saskatchewan education represented on the Advisory Board.

Our recommendations attempt to provide a solution to the many complex issues associated with the operation of independent schools in Saskatchewan in the context of existing provincial legislation and regulations as well as the new Canadian constitutional and legal framework, epitomized by *The Charter of Rights and Freedoms*, 1982. Specifically, the Advisory Board endeavoured to recommend regulations, policies and procedures that would appropriately balance the interests of the children enroled in independent schools, their parents, and the public at large.

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Respectfully submitted,

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Executive Summary

Background

Private schools have always existed in Saskatchewan, and have been established at different times for different reasons. For example, the eight historical high schools[1] were established in the early 1900s as "schools of necessity" at a time when public high schools were not always available, not as a complaint or in competition to the public schools, but as a valuable educational alternative, providing quality education with a spiritual dimension. These schools are now

> permanent fixtures in Saskatchewan. Their traditions and place in the education practice of this province are deeply rooted. They are well-respected within education circles and it is not uncommon for some of these schools to attract significant numbers of out-of-province students to their campuses.[2]

The Seventh-day Adventists started their first school in Saskatchewan in 1924 as a "school of diversity". While they supported the public education philosophy of providing the very best education possible for the children of Saskatchewan, they nonetheless felt, in the context of their unique beliefs, that their children's needs could not be met within the public education system. They desired a spiritual foundation, not just a spiritual dimension, to their children's entire educational experience.

Then between 1975 and 1985, as part of a nation-wide phenomenon, some 30 new private schools, mostly evangelical Christian schools, were started in Saskatchewan as "schools of protest".[3] The parents who started these schools were not looking for help with religious instruction. Rather, some of these parents became frustrated in dealing with more and more influences in the schools that, in their opinion, worked against what they were trying to do in the home.

This latest generation of religiously-based private schools were not, of course, the first "schools of protest" in Canada. While the public educational system was being established in the United Province of Canada after 1841, the Roman Catholic separate schools in Ontario and the Protestant dissentient schools in Quebec were the first schools of protest, which protests gave rise to major political issues and compromises, including section 93 of *The Constitution Act*, 1867. As a result, in Ontario, Quebec, Alberta, Saskatchewan, and Newfoundland, Roman Catholic schools are "public" schools, while in other provinces, they remain private schools.

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[1] Athol Murray College of Notre Dame, Caronport High School, College Mathieu, Luther College, Lutheran Collegiate Bible Institute, Rivier Academy, Rosthern Junior College, and St. Angela's Academy. The Saskatchewan Association of Private High Schools, which comprises these schools, proposed this term, the "historical high schools", to describe their schools, which description was adopted by the Board.

[2] Gordon Dirks, *Review of Private Schooling in Saskatchewan* (September 1987), p. 22.

[3] The three phrases, "schools of necessity", "schools of diversity", and "schools of protest", come from Robert Stamp, "A History of Private Schools in Ontario", in Bernard J. Shapiro, *The Report of the Commission on Private Schools in Ontario* (October 1985), pp. 193-207.

Finally, a few "alternative" private schools were also established in Saskatchewan in the 1970s, which provided an education for disabled or disadvantaged students with special emotional or socio-psychological problems who, consequently, were "at risk" of not being able to achieve their potential within regular elementary and secondary programs.[4]

While some private schools have always existed in Saskatchewan, regulations, policies, and procedures that clearly define the legal status of all private schools have not been fully developed. In particular, the latest generation of religiously-based private schools have existed, for all intents and purposes, in a legal vacuum. Among other things, it has been unclear which public authorities were responsible for supervising these new schools.

While the Alberta case, *Jones* v. *The Queen*,[5] which was expected to shed light on the powers and the responsibilities of provincial governments with respect to the operation of private schools, was proceeding to the Supreme Court of Canada, the Government of Saskatchewan, like other provincial governments, delayed its response to this latest generation of private schools.

Then on March 13, 1987, after the Supreme Court had rendered its decision in the *Jones* case in November 1986, the provincial government announced the appointment of Gordon Dirks to conduct a study on private schooling in Saskatchewan, examining, among other things, the "quality of education in private schools; funding for private schools; taxation of private school property; home schooling; attendance requirements; parents' rights; and current and projected trends respecting private schools."

The Minister of Education released the Dirks' Report in December 1987 and responded to the Report on June 27, 1988, announcing, among other things, that the Government would establish a new system for the regulation and registration of private schools through the provincial Department of Education, that would resolve the legal status of private schools; clarify the position of their pupils in terms of compulsory attendance; and ensure that private schools maintained a high quality of education.

The Minister of Education proceeded to implement these new policies by announcing (on January 23, 1989) his intention to establish an Advisory Board to help develop regulations for private schools in Saskatchewan; by establishing an Independent Schools Branch in the Department of Education; by appointing Chris Gerrard (who has also served as the Secretariat to the Advisory Board) as the first Director of this Branch, effective July 1, 1989; and by passing amendments to *The Education Act* in August 1989, which referred to private schools as independent schools, in order to provide a legislative framework for whatever regulations, policies, and procedures the Board would recommend.

In consultation with the major partners in Saskatchewan education, the Minister established the representative structure of the Advisory Board: seven representatives from the public education system; seven representing independent schools; five representing the post-secondary/employment sector; a chairperson; two representatives of the Department of Education; and a legal advisor. Each of the organizations represented on the Board were invited to name their own representatives to the Board. Alec Postnikoff, former long-time Director of Education for Saskatoon (West) School Division, agreed to serve as Chairperson.[6]

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[4] Cornwall Alternative School in Regina, Radius Tutoring in Saskatoon, and Ranch Ehrlo in Pilot Butte.

[5] (1987) 31 Dominion Law Reports (4th) 569.

Guiding Principles

First, in various news releases and in his letter of invitation to the organizations represented on the Board, the Minister established nine guiding principles which constituted the policy framework for the Board:

- The Government of Saskatchewan has a compelling interest in the education of all Saskatchewan children, of which the primary vehicle is the public education system in its two dimensions, the public schools and the separate schools.
- From either an historical, legal, or practical perspective, independent schools have the right to exist in Saskatchewan.
- The Government has the interest and the responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan.
- In order to operate legitimately in Saskatchewan, independent schools will be required only to be registered and not licensed.
- The costs of operating independent schools will continue to rest with parents who choose this form of education for their children. There will be no new operating grants for independent schools beyond those currently provided to the historical high schools.
- By their very nature, independent schools are similar to public schools in some respects and different in others. Parents enrol their children in independent schools in order to achieve objectives which may not or can not be satisfied within the public education system.
- Independent schools must provide a quality of education comparable to that of public schools.
- Independent schools must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development.
- Independent schools must not promote values which conflict with the rights, freedoms, and moral principles upon which our society is based.

Second, the Board considered the Canadian constitutional and legal framework within which independent schools exist, since, in contrast to Saskatchewan's public and separate schools, as well as the soon-to-be-established fransaskois schools, independent schools are not "public authorities", but "legal persons".[7] Neither their legal right to exist nor their authority comes from *The Education Act*, but from the common law, now reinforced by *The Charter of Rights and Freedoms*, 1982, and from the denomination, church, or society that created them. From *The Charter*, from case law, from international declarations, and from *The Saskatchewan Human Rights Code*, the Board derived the following principles:

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[6] See Table 1 for the complete membership of the Board.

- Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, parents have the right and the responsibility to provide for the education of their children in accordance with their religious convictions.
- Every person has the right to a formal education.
- The government has the authority to exempt children of compulsory school age from attendance at a public school.
- The relationship between the Department of Education and independent schools should recognize freedom of conscience and religion in education and should be associated with fundamental justice.
- Provincial education policy should be consistent with the preservation and enhancement of the multicultural heritage of Canadians.
- Independent schools are not public authorities.
- The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.
- In the case of an alleged failure of parents or guardians to provide adequate education for their children, the burden of proof resides with the government.
- Independent schools have the right to restrict access to members of their own group.
- Independent schools have the right to restrict the employment of teachers to individuals who share the faith and practice of the organization that owns or operates the independent school.

Third, in the course of its deliberations, the Board developed an number of operational principles surrounding its decisions, which, taken together, constituted its operational framework:

- As far as possible, the Board will work on a consensus basis.
- The Board will not be concerned if any of its recommendations require an amendment to provincial legislation. The Department of Justice will ultimately be responsible for determining which items must be in statute, which can go in regulation, and which can be handled simply as policy statements.

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[7] This is acknowledged in the definition of an independent school in *The Education Act*, clause 2(s.1).

- As far as possible, the Board will recommend regulations, policies, and procedures governing the operation of independent schools that are consistent with and conform to existing Saskatchewan educational practices and traditions.

- While the Board has examined legislation and regulations pertaining to independent schools in other provinces insofar as these reflect a common constitutional and legal framework in Canada, the Board's recommendations will represent a made-in-Saskatchewan regime for the operation of independent schools in Saskatchewan.

- The Board recognizes the unique position of the historical high schools in the Saskatchewan education scene. Its recommendations will not alter or diminish the existing relationships that these schools have already developed with other partners in Saskatchewan education.

- The Board recognizes that most, although not all independent schools are religiously-based. In establishing a legal framework for independent schools in Saskatchewan, the Government is not interested in regulating religious institutions as such, but in regulating education.

- The Board will attempt to make recommendations applicable not only to the existing independent schools but also to those that may be established hereafter.

- The Board will attempt to facilitate the effective operation of independent schools. Its recommendations will not be intended to have a negative impact on the ability of legitimate independent schools to operate.

- The Board will attempt to promote a harmonious relationship between independent schools and other partners in Saskatchewan education.

- The Board will direct its recommendations primarily to the Minister of Education. It acknowledges that recommendations to other partners in Saskatchewan education will carry less weight.

Process

The Advisory Board met once a month for ten months, from October 1989 to July 1990, inclusive, except for May 1990, when it met twice. At its first meeting, the Board established an Executive Committee to oversee the work of the Board and to handle administrative matters, and agreed to establish three technical committees -- a teacher education, certification, and standards committee; a curriculum, instruction, and evaluation committee; and a student/teacher needs committee -- in order to conduct detailed work on these particular issues. All committees were composed of a balanced matrix of representatives similar to the Board.

To help the Board establish the precise mandates of these committees and to assist the committees with their work, the Board first requested information on curricula presently being used in Saskatchewan's independent schools; on the characteristics of independent schools, including who attends independent schools; and on legislation and regulations pertaining to independent schools in other provinces.

Then, at the second and third meetings of the Board, each of the organizations represented on the Board made a presentation to the full Board with respect to their organization's goals and philosophy; their membership and mandate; how they perceived their role in Saskatchewan education; and their views on public and independent schools.

Third, the Board heard additional presentations on provincial curriculum policy; curriculum issues from an independent school perspective; teacher certification in Saskatchewan; teacher issues from an independent school perspective; student needs and services provided for special needs students in Saskatchewan; and school facilities in Saskatchewan.

Basically, the committee process worked well. The three committees were able to reach a consensus on most issues. The Board approved most recommendations with some modifications, but sent others back to committee for further consideration. The Board itself considered and approved recommendations with respect to a number of "other issues" that did not form part of the mandate of the three technical committees.

Recommendations

The Minister's Advisory Board on Independent Schools is making one recommendation that is foundational to and pervades virtually all other recommendations, namely:

> *That the Minister of Education establish four categories of independent schools in Saskatchewan called registered independent schools, accredited independent schools, historical high schools, and alternative independent schools.*

This recommendation arises from the guiding principles discussed above, from the nature of independent schools, and from past practice with respect to independent schools in Saskatchewan. The Board was also cognizant that other provinces have established different categories of independent schools, with a general distinction between registered and accredited schools.

Under British common law, public boards of education, being "public authorities", can typically only do those things which *The Education Act* authorizes them to do. By contrast, independent schools, being "legal persons", can do anything except what they are restricted from doing. As such, independent schools are generally subject to three types of restrictions:

- In the first instance, by laws that restrict the rights of individuals or corporations;
- In the second instance, by the Act under which they are incorporated, their own incorporating documents, and their own by-laws; and
- In the third instance, which was the most important for the Board's considerations, by explicit provisions in legislation relating to their activities.

Typically, restrictions of the third type arise at the point where the activities of legal persons come into contact with matters of public concern. In the case of independent schools, this includes the compelling interest of the state in the education of children, which interest is manifested in applicable legislative and regulatory provisions such as recognition of a school for purposes of compulsory attendance, exemption from municipal property taxation, recognition of a school's educational program for purposes of secondary level standing, and public funding.

One can conceive these four provisions as an increasing level of "benefits" conferred on independent schools by *The Education Act* and the accompanying regulations in exchange for an increasing level of "requirements".

In Saskatchewan, the recent amendments to *The Education Act*, clauses 2(ee.1) and 156(a.1), recognize a "registered" independent school as providing its pupils a legitimate exemption from compulsory attendance at a public or separate school. Second, the existing *Education Regulations*, section 29, specify criteria for "accreditation" of an independent school, that is, an additional departmental sanction of a school's program, conferring among other things, the eligibility of its pupils for secondary level standing. Third, Saskatchewan's historical high schools are not only accredited, but also funded in accordance with criteria in *The Education Regulations*, section 71. The various criteria are cumulative. Implicit in both sections 29 and 71 is the presumption that not all registered independent schools will be eligible for accreditation, and not all accredited high schools will be eligible for funding.

This makes three categories of schools: registered independent schools, accredited independent schools, and the historical high schools. Finally, the Board recognized that the three alternative independent schools were presently funded under *The Education Regulations*, clauses 61(b) and 61(o). Constitutionally, while the government does not appear to be required to fund independent schools, if it does fund some schools in accordance with certain criteria, then it must fund all schools that meet these same criteria equally. Since the Government of Saskatchewan presently funds the historical high schools and the alternative independent schools in accordance with different criteria, the Government must create two different categories of funded schools.

Having arrived at this foundational recommendation, much of the remainder of the Board's deliberations dealt with comprehensive criteria for these four categories of independent schools. As such, the rest of the Board's recommendations, which are listed at the end of this executive summary, fall into five groups:

- Requirements and duties of independent schools;
- Opportunities and powers of independent schools;
- Responsibilities of the Department of Education;
- The collaborative process; and
- Recommendations to other organizations represented on the Advisory Board.

The major recommendations relating to the four categories of schools are also summarized in Table 2, with the recommendation number appearing in square brackets after each item. From the point of view of independent schools, the Board's recommendations involve new requirements and duties, but they also provide new opportunities. From the point of view of the Department, the Board's recommendations involve new responsibilities.

The Board recommends that each independent school must be owned or operated by a body corporate, incorporated in the province of Saskatchewan. Each independent school board, which exercises powers similar to a public board of education, must comprise a minimum of three adults, representing three different family units, appropriately selected by the organization that owns or operates the independent school. Each independent school must also have enroled pupils between the ages of 5 and 21 from a minimum of two different family units.

These recommendations provide the provincial government with a number of safeguards, including a direct record of ownership, separate from that of Revenue Canada, as well as requiring, under Saskatchewan's *Non-Profit Corporations Act*, an annual financial audit. The corporate structure of an independent school, with a minimum of three families represented on the board and a minimum of two families with children enroled in the school, also distinguishes an independent school from a home-schooling situation.

Each independent school must operate a full-time education program in which the days and hours of operation accord with sections 164 to 168 of *The Education Act*.[8]

Each registered independent school must have goals that are not inconsistent with the *Goals of Education for Saskatchewan*, while each accredited independent school[9] must subscribe to the *Goals of Education for Saskatchewan*. Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society,[10] these requirements are not intended to diminish or to infringe upon the religious conscience of any independent school. Like public boards of education, each independent school retains the freedom to add to these goals and to define responsibility for their achievement among the school, the home, the church, and the community. A common set of educational goals are needed to provide a common sense of direction for our society while affording sufficient latitude to accommodate the aspirations of all parents for their children.

Each registered independent school must provide instruction in the required areas of study -- language arts, mathematics, science, social studies, health education, arts education, and physical education -- appropriate for the age and ability of its pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy. Each accredited independent school *per se* or historical high school must conform to provincial curriculum policy in respect of the required areas of study, the common essential learnings, locally-determined options, adaptive dimension, and time and credit allocations. Each alternative independent school must conform to provincial curriculum policy in respect of alternative education.

Thus these recommendations define a registered independent school in the generic sense, which therefore excludes schools that offer solely religious instruction, solely language instruction, solely a program of social or cultural activities, or solely a program of recreational or athletic activities.

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[8] The recommended requirements with respect to the days and hours of operation, to the goals of education, and to curriculum do not represent a change for the historical high schools.

[9] Unless otherwise stated, the term "accredited schools" refers to all three classifications of accredited schools combined: the accredited schools *per se*, the historical high schools, and the alternative schools.

[10] The phrase "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" comes from *The Charter of Rights and Freedoms*, 1982, section 1.

That a school must provide instruction in these required areas of study is not a question of conscience so long as the school has the freedom to choose which courses or programs to teach in these required areas. Then various other recommendations provide mechanisms for registered schools to become accredited over time without sacrificing their conscience. In conforming to provincial curriculum policy, the accredited schools *per se* and the historical high schools must teach courses and programs that have been approved by the Department, either:

- provincially developed courses and programs;
- locally developed courses, designated 10L, 20L, and 30L;
- regular courses, designated 10I, 20I, and 30I, developed by independent schools themselves and submitted to the Department for approval; or
- programs at the elementary and middle levels approved by the Department's supervisory official for independent schools.

The Board recommends that the Department of Education be responsible for the inspection of registered schools and the supervision of accredited schools, at the expense of the Department. However, instead of being supervised by the Department, an accredited school may, with the approval of the Department, make arrangements for supervision by a local director or superintendent of education, or a person similarly qualified.

The Board's understanding of inspection is broader than the historical concept of school inspection in Saskatchewan's public schools as checking off minimum criteria on a checklist, which no longer reflects in an operational way the work of directors and superintendents of education in Saskatchewan. It includes observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of children in the independent school, as well as non-directive and unobtrusive supervision.

Supervision is an ongoing process aimed at the improvement of instruction in a school that includes both evaluating and enhancing the performance of teachers, leading to teacher growth, improved instruction, and improved learner outcomes. In the context of independent schools, neither inspection nor supervision will involve responsibility for the recruitment and dismissal of teachers, or the selection of programs. Both inspection and supervision will also appreciate and recognize the distinct philosophical orientation of each independent school, and will not attempt to make an independent school a mere replica of a public school.

The Board recommends that teachers in religiously-based registered independent schools must hold a valid Saskatchewan teacher's certificate or a Letter of Eligibility to Teach, while teachers in all other registered and accredited schools must hold a valid Saskatchewan's teacher's certificate. This includes a proposed Probationary "B" Teaching Certificate, similar to the existing probationary certificate, specifically designed for the needs of independent schools.

That a religiously-based registered school may exercise an exemption from the state's normal certification requirements and may apply to the Minister for a Letter of Eligibility to Teach on behalf of a teacher represents a unique recommendation in the Canadian context. On the one hand, the public education representatives insisted that the state institute a pro-active, as opposed to a re-active mechanism to deny a teacher access to or to remove a teacher from an independent school classroom who was ineligible to teach by virtue of, say, a criminal sexual offence or a criminal offence involving a child. On the other hand, while independent school representatives did not see a requirement to demonstrate to the state that a person was *eligible* to teach in a religiously-based registered independent school would be a violation of the separation of church and state, they did believe strongly that a requirement to demonstrate that a person was *qualified* would be such a violation. The Supreme Court of Canada, itself, in *Caldwell et al.* v. *Stuart et al.*,[11] had made this same distinction between eligibility and qualifications to teach, in the case of a Roman Catholic independent school in British Columbia.

Furthermore, as the Supreme Court of Canada had said in the *Jones* case, having to request an exemption from the state's normal certification requirements and to apply, say, for a Letter of Eligibility to Teach was, in and of itself, not a violation of religious conscience. It was sufficient to protect an independent school against the disregard of its fundamental freedoms or against procedural unfairness at the point of application. The Board also noted that legislative provision for exemptions, based on religious conscience, from the operation of otherwise valid laws was not uncommon. For example, *The Military Service Act*, 1917, and the Saskatchewan *Trade Unions Act* provided exemptions from military service and trade union membership, respectively, both on grounds of religious conscience.

According to *The Saskatchewan Human Rights Code*, religiously-based independent schools, as well as some other types of schools, may restrict access to members of their own group. Alternative independent schools are also distinguished from other independent schools by access. Their students must generally be placed by school boards, Saskatchewan Social Services, Saskatchewan Justice, or the federal Department of Indian Affairs, with the concurrence of the Special Education Branch of Saskatchewan Education.

Independent school facilities must meet construction, health, and safety standards as established by national, provincial, and local authorities. Upon application for registration, each independent school must provide certification that its facility meets these standards.

Parents must be able to make choices for their children based on information as complete as possible. Therefore, the operator of each registered independent school must notify parents that the school is not accredited by Saskatchewan Education, and of the reasons why the school is not accredited by Saskatchewan Education, while the operator of an accredited independent school may advertise that its school is accredited by Saskatchewan Education.

The Minister of Education has established structures like the Board of Teacher Education and Certification (BTEC) and the K-12 Education Program Policies Advisory Committee (EPPAC) in order to maintain standards within the public education system. If accredited independent schools are now going to be required to fit into the scope of regular teacher certification and curriculum requirements for the public education system, and if registered schools are going to be encouraged to become accredited over time, then the Minister should consider representation from independent schools on these two committees within the present structure and composition of these committees.[12]

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[11] (1984) 2 Supreme Court Reports 603.

[12] That is, the Minister would appoint representation from independent schools from among the Minister's own component on these two committees.

In addition, the Board recommends that the Minister establish, for at least a three-year period, an Independent Schools Review Board in order to review, as called upon, any disputes arising from the administration of independent school policies. The Independent Schools Review Board would have the power to make recommendations to the Minister with respect to administrative policies, procedures, or decisions that are referred to it. After three years, the Minister may extend the life of the Review Board.

The Independent Schools Review Board will also monitor on a regular basis the issuance of Probationary "B" Teaching Certificates and Letters of Eligibility to Teach. The Minster of Education will remove Letters of Eligibility to Teach and/or school registrations where criteria are not being met, subject to the principles of fundamental justice.

Finally, the Board makes a number of recommendations to other organizations represented on the Advisory Board. Primarily, these recommendations are designed to promote a harmonious relationship between independent schools and other partners in Saskatchewan education, to encourage independent schools to become an integral part of the Saskatchewan education scene, and to encourage all independent schools to become accredited over time.

Conclusion

Clearly, the Minister has established the Advisory Board at a very unique time in Saskatchewan history, not only because of *The Charter of Rights and Freedoms*, 1982, but also because the Department of Education is in the midst of implementing a major curriculum reform, namely Core Curriculum, in the province's public and separate schools, and because the Department is in the process of establishing a fransaskois component to the Saskatchewan school system. Also, professional educators -- in public, separate, and independent schools -- are facing new demands in delivering services to special needs students whose education is "at risk", but who do not fit into traditional categories of disabled students.

Throughout the course of its work, the Minister's Advisory Board made no attempt to priorize the interests of the children enroled in independent schools, their parents, and the public at large; rather, the Board attempted to balance the interests of these three groups. The proposed relationship between the Department of Education and independent schools recognizes freedom of conscience and religion in education as well as fundamental justice. In accordance with the *Jones* decision, independent schools and parents who enrol their children in independent schools must apply for exemptions, at appropriate points, from the regular scheme of education in the province. The Department will consider these applications recognizing freedom of conscience and religion in education, the rights of children, the rights of parents, the compelling interest of the state in education, and fundamental justice for all.

Insofar as the Board is aware, the Minister's Advisory Board on Independent Schools has examined the issues surrounding independent schools in a more comprehensive way, involving all the major partners in the educational system, than any other province. Within its mandate, the Board has addressed all questions raised both by the Minister and by the organizations represented on the Board. Accordingly, if the Minister implements these recommendations, then Saskatchewan will have the most comprehensive legal framework governing the operation of independent schools of any province, with the possible exception of Quebec.

Table 1

Minister's Advisory Board on Independent Schools: Membership

Representatives from the public education system

1&2. Saskatchewan School Trustees Association

Ann Stewardson, Chairperson, Swift Current R.C.S.S.D. No. 11

William A. Wells, Employee Relations Consultant

3&4. Saskatchewan Teachers' Federation

Fred Herron, General Secretary

Derwyn Crozier-Smith, Executive Assistant

5. League of Educational Administrators, Directors, and Superintendents

Peter Popowich, Director of Education, Outlook School Division

6. University of Saskatchewan, College of Education

Dennis Dibski, Professor of Educational Administration

7. University of Regina, Faculty of Education

E. L. (Bud) Hurlbert, Professor of Educational Administration

Representatives from the independent schools

8&9. Saskatchewan Association of Private High Schools

Donald A. King, President, and Principal, Luther College

Sr. Rosetta Reiniger, Executive Director, St. Angela's Academy

10&11. Saskatchewan Association of Independent Church Schools

Marge Bailey, President, and Principal, Kindersley Christian Academy

Dave Wells, Executive Member, and Principal, Maranatha Christian Academy

12. Seventh-day Adventist Schools

Myron Wareham, Director of Education, Manitoba-Saskatchewan Conference of the Seventh-day Adventist Church

13. Church of God in Christ (Mennonite) Schools

Fred Reimer, Chairperson, Pasquia Hills Christian School, Carrot River

14. Society Schools

Sharon Foreman, Heritage Christian School, North Battleford

Representatives from the post-secondary/employment sector

15. University of Saskatchewan

Ken Smith, Registrar

16. University of Regina

Donna Schwandt, Assistant Registrar

17. Saskatchewan Institute of Applied Science and Technology

Bob Welte, Registrar, Wascana Campus

18. Saskatchewan Employers

Gary Bevan, President, Northland Stationers

19. Apprenticeship and Training

Wendell Dent, Member, Provincial Apprenticeship Board

Others

20. Chairperson

Alec Postnikoff, former Director of Education

21&22. Saskatchewan Education

Fred Renihan, Assistant Deputy Minister, Curriculum and Evaluation

Chris Gerrard, Director, Independent Schools Branch

23. Legal Advisor and Vice-Chairperson

Howard McConnell, Professor of Law, University of Saskatchewan

Table 2

Recommended Classification of Independent Schools

<table>
<tr><th>Criteria</th><th>Registered Schools</th><th>Accredited Schools</th><th>Historical High Schools[13]</th><th>Alternative Schools[14]</th></tr>
<tr><td rowspan="5">Eligibility</td><td colspan="4">Must be owned or operated by a body corporate, incorporated in the province of Saskatchewan. [(D.2.1)]</td></tr>
<tr><td colspan="4">Must have a board analogous to a public board of education, which exercises powers similar to a board of education. [(D.2.2)]</td></tr>
<tr><td colspan="4">Board must comprise a minimum of three adults, representing three different family units, appropriately selected by the organization that owns or operates the independent school. [(D.2.3)]</td></tr>
<tr><td colspan="4">Must have enroled pupils between the ages of 5 and 21 from a minimum of two different family units. [(D.2.4)]</td></tr>
<tr><td></td><td>Must have operated successfully for at least one full year. [(D.2.5)]</td><td>In operation for not less than five years; not less than 60 pupils enroled in Grades 9 to 12 during each of preceding two years. [Ed. Reg. 71(2)(b)]</td><td></td></tr>
<tr><td>Days and hours of operation</td><td colspan="4">Must operate a full-time educational program in which the days and hours of operation accord with sections 164 to 168 of The Education Act. [(B.1.1), (B.1.2), (B.1.3), and Ed. Regulations 71(2)(c)]</td></tr>
<tr><td rowspan="2">Goals of education</td><td>Not inconsistent with the Goals of Education for Saskatchewan. [(B.2.1)]</td><td colspan="3">Must subscribe to the Goals of Education for Saskatchewan. [(B.2.2)]</td></tr>
<tr><td colspan="4">Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, recommendations (B.2.1) and (B.2.2) are not intended to diminish or to infringe upon the religious conscience of any independent school. Each independent school has the freedom to add to these goals and to define responsibility for their achievement among the school, the home, the church, and the community. [(B.2.3) and (B.2.4)]</td></tr>
<tr><td rowspan="5">Curriculum</td><td rowspan="2">Must provide instruction in the seven required areas of study, appropriate for the age and ability of the students, and comparable in quality to that of the public schools. [(B.3.1)]</td><td colspan="2">Must conform to provincial curriculum policy in respect of the required areas of study, common essential learnings, locally-determined options, adaptive dimension, and time and credit allocations. [(B.3.2)]</td><td>Must conform to provincial curriculum policy in respect of alternative education. [(B.3.3)]</td></tr>
<tr><td colspan="3">Courses and programs of study must be approved by the Department of Education. [Education Regulations 29(b)(i) and 71(2)(c)]</td></tr>
<tr><td colspan="3">May submit courses to the Department for approval as locally developed courses, designated 10L, 20L, and 30L. Such courses must be taught by certified teachers for students to receive secondary level credit. [(B.3.4)]</td><td></td></tr>
<tr><td colspan="3">May submit courses to the Department for approval as regular courses originating from independent schools, designated 10I, 20I, and 30I. Such courses must be taught by certified teachers for students to receive secondary level credit. [(B.3.5)]</td><td></td></tr>
<tr><td colspan="3">May submit programs at the elementary and middle levels for approval to the Department's supervisory official. [(B.3.6)]</td><td></td></tr>
<tr><td>Religious instruction</td><td colspan="3">Subsection 181(1) of the Education Act shall apply to independent schools in respect of non-credit religious instruction in the religious doctrine or creed of the organization that owns or operates the independent school. [(B.5)]</td><td></td></tr>
</table>

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[13] Athol Murray College of Notre Dame, Caronport High School, College Mathieu, Luther College, Lutheran Collegiate Bible Institute, Rivier Academy, Rosthern Junior College, and St. Angela's Academy.

[14] Cornwall Alternative School, Radius Tutoring, and Ranch Ehrlo.

Criteria	Registered Schools	Accredited Schools	Historical High Schools	Alternative Schools
Inspection/ supervision[15]	Department of Education responsible for inspection. [(B.6.1) and (B.6.2)]	Department of Education responsible for supervision. With the approval of the Department, schools may arrange for supervision by a local director or superintendent, or a person similarly qualified. [(B.6.1), (B.6.3), (B.6.4), and Ed. Regulations 29(a) and 71(2)(c)]		
Evaluation of students	Pupils may write Grade 12 departmental examinations.	Pupils eligible to receive secondary level credits. [Education Regulations 29]		
Qualifications of teachers	Teachers must hold a valid Sask. teacher's certificate or Letter of Eligibility.[16] [(A.1.1), (A.3.1), and (A.3.2)]	Teachers must hold a valid Saskatchewan teacher's certificate. This refers to all existing certificates, including provisional and probationary certificates, as well as the proposed Probationary "B" Teaching Certificate. [(A.1.1), (A.2.1), (A.2.2), (A.2.3), and (A.2.4)]		
	May restrict the employment of teachers to individuals sharing the faith and practice of the the organization that owns or operates the independent school. [(A.1.2)]			
Access	May follow a restrictive policy with respect to enrolment on the basis of sex, creed, religion, or physical disability, where the school enrols persons of a particular sex, creed, or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled. [(D.5.1)]			Students placed by school boards, Sask. Social Services, Sask. Justice, or Indian Affairs with the concurrence of Sask. Education, Special Education Branch. [(D.5.2)]
School facilities	Must meet construction, health, and safety standards as established by national, provincial, and local authorities. Upon registration, must provide certification that school facilities meet these standards. [(C.1.1) and (C.1.2)]			
Furnishing information	Subject to regulations, must furnish information to the Department in any form the Minister may require with respect to the pupils, teachers, curriculum, facilities and equipment of the school. [Education Act, subsection 361(1)]			
			Must furnish the Minister with any information the Minister may require with respect to finances, structure, and administration. [Ed. Regulations 71(2)(d)] In the case of capital grants, must submit preliminary drawings and cost estimates of proposed projects to the Minister. [Ed. Reg. 71(2)(e)]	
Advertising	Must notify parents that school is not accredited by Sask. Education. [(D.2.6)]	May advertise that school is accredited by Saskatchewan Education. [(D.2.7)]		
Provincial funding	No. [Minister's news release, 27 June 1988]		Yes. [Ed. Regulations 71 and 72]	Yes. [Ed. Regulations 61(b) and (o)]

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[15] Inspection involves checking compliance with criteria for registered schools on an ongoing and collaborative basis, and observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of the children in the school. Neither inspection nor supervision involves responsibility for the recruitment and dismissal of teachers, or the selection of programs in an independent school. Both inspection and supervision will appreciate and recognize the distinct philosophical orientation of each independent school.

[16] Only a religiously-based registered independent school may apply for a Letter of Eligibility To Teach on behalf of a teacher.

Summary of Recommendations

To the Minister of Education

Foundational Recommendation

That the Minister of Education establish four categories of independent schools in Saskatchewan called registered independent schools, accredited independent schools, historical high schools, and alternative independent schools.

Requirements and Duties of Independent Schools

(A.1.1)[17] That teachers in religiously-based registered independent schools must hold either a valid Saskatchewan teacher's certificate or a Letter of Eligibility to Teach, while teachers in all other registered and accredited independent schools[18] must hold a valid Saskatchewan teacher's certificate.

(A.1.2) Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that recommendation (A.1.1) is not intended to diminish or to infringe upon:
(a) the religious conscience of any independent school; or
(b) the right of any independent school to hire only teachers who share the faith and practice of the organization that owns or operates the independent school.

(B.1.1) That each independent school must operate a full-time program.

(B.1.2) That each independent school must operate an educational program in which the days and hours of operation accord with sections 164 to 168 of *The Education Act*.

(B.1.3) That in respect of sections 164 to 168 of *The Education Act*, each independent school board be granted the same powers as public boards of education.

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[17] Recommendation (A.1.1) refers to the first recommendation arising from the first question in the mandate of committee "A", which is the teacher education, certification, and standards committee; recommendation (A.1.2), to the second recommendation arising from the first question, etc. Committee "B" is the curriculum, instruction, and evaluation committee; committee "C" the student/teacher needs committee; and committee "D", the other issues that were considered directly by the Board. Questions labelled "A", "B", "C", and "D" are addressed in Chapters V, VI, VII, and VIII, respectively.

[18] Unless otherwise stated, the term "accredited schools" refers to all three classifications of accredited schools combined: the accredited schools *per se*, the historical high schools, and the alternative schools.

(B.2.1) That each registered independent school must have goals that are not inconsistent with the *Goals of Education for Saskatchewan*.

(B.2.2) That each accredited independent school must subscribe to the *Goals of Education for Saskatchewan*.

(B.2.3) Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that recommendations (B.2.1) and (B.2.2) are not intended to diminish or to infringe upon the religious conscience of any independent school.

(B.2.4) That each independent school has the freedom to add to these goals and to define responsibility for their achievement among the school, the home, the church, and the community.

(B.3.1) That each registered independent school must provide instruction in the required areas of study -- language arts, mathematics, science, social studies, health education, arts education, and physical education -- appropriate for the age and ability of its pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy.

(B.3.2) That each accredited independent school *per se* or historical high school must conform to provincial curriculum policy in respect of

- required areas of study
- common essential learnings
- locally-determined options
- adaptive dimension
- time and credit allocations

as outlined in *Core Curriculum Plans for Implementation* (Saskatchewan Education, December 1987).

(B.3.3) That each alternative independent school must conform to provincial curriculum policy in respect of alternative education.

(B.3.7) That section 180 of *The Education Act* apply to independent schools in respect of the language of instruction in each independent school.

(B.5) That subsection 181(1) of *The Education Act* apply to independent schools in respect of non-credit religious instruction in the religious doctrine or creed of the organization that owns or operates each independent school.

(C.1.1) That each independent school facility must meet construction, health, and safety standards as required by national, provincial, and local authorities.

(C.1.2) That, upon application for registration of its school, each independent school must provide certification that its facility meets the above construction, health, and safety standards.

(D.2.1) That each independent school must be owned or operated by a body corporate, incorporated in the province of Saskatchewan.

(D.2.2) That each independent school must have a board analogous to a public board of education, which exercises powers similar to a public board of education.

(D.2.3) That each independent school board must comprise a minimum of three adults, representing three different family units, appropriately selected by the organization that owns or operates the independent school.

(D.2.4) That each independent school must have enroled pupils between the ages of 5 and 21 from a minimum of two different family units.

(D.2.5) That a registered independent school must have operated successfully for at least one full year before it may become an accredited school *per se*.

(D.2.6) That the operator of each registered independent school must notify the parents of the pupils in the school that the school is not accredited by Saskatchewan Education, and of the reasons why the school is not accredited by Saskatchewan Education.

(D.3.1) That each independent school must maintain confidential pupil records of a form and in a manner consistent with Saskatchewan's public schools.

(D.3.2) That each parent or guardian of a child of compulsory school age who enrols that child in an independent school be responsible for providing notification of the enrolment, in writing, to the principal of the public school in which that child was enroled, or to the director of the school division in which that child resides.

(D.3.3) That an independent school board that decides to close its school must give 30 days notice, in writing, of its intention to close its school to:
(a) the Minister of Education;
(b) the director of education of the school division in which the independent school is situated; and
(c) the parent or guardian of each pupil enroled in its school.

(D.5.2) That students in alternative independent schools must generally be placed by school boards, Saskatchewan Social Services, Saskatchewan Justice, or the Department of Indian Affairs, with the concurrence of the Special Education Branch of Saskatchewan Education.

Opportunities and Powers of Independent Schools

(A.2.4) That an independent school board may apply to the Department's certificate issuing official for a Probationary "B" Teaching Certificate on behalf of a teacher.

(A.3.2) Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that only a religiously-based registered independent school board may exercise an exemption from the state's normal certification requirements and may apply to the Minister for a Letter of Eligibility to Teach on behalf of a teacher.

(B.3.4) That an independent school board, like public boards of education, may submit courses to the Department for approval as locally developed courses, designated 10L, 20L, and 30L. Such courses must be taught by certified teachers for students to receive secondary level credit.

(B.3.5) That an independent school board may submit courses to the Department for approval as regular courses originating from independent schools, designated 10I, 20I, and 30I. Such courses shall

- be academically equivalent to provincial courses designated 10, 20, 30;
- follow the same process of approval as for locally developed courses;
- reflect the religious or philosophical base of the independent school; and
- be taught by a certified teacher for students to receive secondary level credit.

(B.3.6) That an independent school board may submit programs at the elementary and middle levels for approval to the Department's supervisory official for independent schools.

(C.2) That public and independent school boards may negotiate arrangements, including fee-for-service arrangements, for the provision of services such as bus transportation and driver education to pupils in independent schools.

(D.2.7) That the operator of each accredited independent school may advertise that its school is accredited by Saskatchewan Education.

(D.5.1) That any independent school may follow a restrictive policy with respect to enrolment on the basis of sex, creed, religion, or physical disability, where the school enrols persons of a particular sex, creed, or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled.

Responsibilities of the Department of Education

(A.2.1) That a year of successful teaching experience in an independent school, appropriately supported by a supervisory official, be acceptable for upgrading a provisional teacher's certificate to a permanent certificate.

(A.2.2) That a year of successful teaching experience in an independent school, appropriately supported by a supervisory official, be an acceptable substitute for a practicum.

(A.2.3) That a Probationary "B" Teaching Certificate be created consistent with the policy statement in Table 5.4.

(A.3.1) That a Letter of Eligibility to Teach in a Religiously-Based Registered Independent School be created consistent with the policy statement in Table 5.5.

(B.4) That the Department develop and maintain a recommended materials list for independent schools.

(B.6.1) That the Department be responsible, at the expense of the Department, for the inspection of registered independent schools and for the supervision of accredited independent schools.

(B.6.2) Subject to freedom of conscience and religion in education, and to the separate authorities of the church and the state, that "inspection":

- (a) involves checking compliance with the criteria for registered independent schools on an ongoing and collaborative basis;
- (b) involves observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of the children in the school;
- (c) may involve non-directive and unobtrusive supervision;
- (d) does not involve responsibility for the recruitment and dismissal of teachers, or the selection of programs in an independent school; and
- (e) will appreciate and recognize the distinct philosophical orientation of each independent school.

(B.6.3) That, in addition to inspection, "supervision" is an ongoing process aimed at the improvement of instruction in a school, but:

- (a) does not involve responsibility for the recruitment and dismissal of teachers, or the selection of programs in an independent school; and
- (b) will appreciate and recognize the distinct philosophical orientation of each independent school.

(B.6.4) That, instead of being supervised by the Department, an accredited independent school may, with the approval of the Department, make arrangements for supervision by a local director or superintendent of education, or a person similarly qualified.

(B.6.5) That individuals providing inspectorial or supervisory services meet the qualifications of the Department of Education in respect of directors of education as outlined in *The Education Regulations*, section 5.

(B.7.1) That the Department consider extending accreditation to teachers in non-funded independent schools.

(B.7.4) That the Saskatchewan Correspondence School consider delivering 10I, 20I, and 30I courses as appropriate.

(B.8.1) That the Department's supervisory official for independent schools have the authority to exempt a student of compulsory school age, attending a registered or an accredited independent school, in accordance with clauses 156(b), (f), and (g) of *The Education Act*.

(B.8.2) That the Department's supervisory official for independent schools be responsible for ensuring that the attendance provisions of *The Education Act* are being met with respect to students enroled in independent schools.

(B.9.1) That the Department keep individual independent schools abreast of curriculum development in the province.

(B.9.2) That independent schools who choose to implement a new provincial curriculum during its implementation phase be invited to and have access to departmental in-service associated with the new curriculum.

(C.4) That, consistent with the policy framework laid down by the Minister for the Advisory Board, the Department of Education provide diagnostic and assessment services for special needs students in independent schools.

(C.6) That independent schools have access to common teacher resources, on a fee-for-service basis where appropriate; curriculum guides should be provided at no cost.

(D.3.4) That the Minister remove Letters of Eligibility to Teach and/or school registrations where criteria are not being met, subject to the principles of fundamental justice.

The Collaborative Process

(A.2.5) That the Minister consider representation from independent schools on the Board of Teacher Education and Certification (BTEC), within the present structure and composition of BTEC.

(B.3.8) That the Minister consider representation from independent schools on the K-12 Education Program Policies Advisory Committee (EPPAC), within the present structure and composition of EPPAC.

(D.4.1) That a scaled-down version of the present Advisory Board, named the Independent Schools Review Board, continue to exist for at least three years during the implementation of the present Board's recommendations, in order to review, as called upon, any disputes arising from the administration of independent school policies.

(D.4.2) That all groups represented on the present Advisory Board also be represented on the Independent Schools Review Board.

(D.4.3) That the Independent Schools Review Board have the power to make recommendations to the Minister of Education with respect to administrative policies, procedures, or decisions that are referred to it.

(D.4.4) That the Independent Schools Review Board monitor on a regular basis the issuance of Probationary "B" Teaching Certificates and Letters of Eligibility to Teach.

(D.4.5) That, after three years, the Minister may extend the life of the Independent Schools Review Board.

To the Saskatchewan School Trustees Association

(C.2) That public and independent school boards may negotiate arrangements, including fee-for-service arrangements, for the provision of services such as bus transportation and driver education to pupils in independent schools.

To the Saskatchewan Teachers' Federation

(C.5) That teachers in independent schools be invited to participate in activities that facilitate professional contact between teachers in public and independent schools.

To the League of Educational Administrators, Directors, and Superintendents

(C.5) That teachers in independent schools be invited to participate in activities that facilitate professional contact between teachers in public and independent schools.

To the University of Saskatchewan, College of Education, and the University of Regina, Faculty of Education

(A.4.1) That the Colleges of Education consider allowing students to complete their field experience in accredited independent schools.

(A.4.2) That the Colleges of Education consider incorporating the study of independent schools into the Colleges' programs of studies in order to portray the role of these schools in the overall education system.

To the University of Saskatchewan and the University of Regina

(B.7.2) That the province's post-secondary institutions consider acceptance of courses taught in independent schools, designated 10I, 20I, and 30I, as equivalent to regular 10, 20, and 30 courses, both for admissions credit and as level 30 pre-requisites.

(B.7.3) That the Universities of Saskatchewan and Regina consider acceptance of adult students for admission on the basis of Grade 12 standing. (An adult is a person "who is at least 18 years of age and who has been out of [public] school for at least one year.")

To the Saskatchewan Institute of Applied Science and Technology

(B.7.2) That the province's post-secondary institutions consider acceptance of courses taught in independent schools, designated 10I, 20I, and 30I, as equivalent to regular 10, 20, and 30 courses, both for admissions credit and as level 30 pre-requisites.

I. Background, Membership, Objectives, and Mandate

In 1975, there existed between 15 and 20 private schools in Saskatchewan. Between 1975 and 1985, as part of a nation-wide phenomenon, some 30 new private schools, mostly evangelical Christian schools, were started in Saskatchewan. For all intents and purposes, these schools existed in a legal vacuum. In particular, it was unclear which public authorities were legally responsible for supervising these new schools.

Private schools have always existed in Saskatchewan, even pre-dating the establishment of the first public schools in 1884. The oldest high school in the province -- Rosthern Junior College -- is a private high school established in 1905. However, up until now, regulations, policies, and procedures that have clearly defined the legal status of private schools have not been fully developed, particularly in the light of the new *Charter of Rights and Freedoms*, 1982.

While the Alberta case, *Jones* v. *The Queen*,[1] which was expected to shed light on the powers and the responsibilities of provincial governments with respect to the operation of private schools, was proceeding to the Supreme Court of Canada, the Government of Saskatchewan, like other provincial governments, delayed its response to this latest generation of private schools.

Then on March 13, 1987, after the Supreme Court had rendered its decision in the *Jones* case in November 1986, the provincial government announced the appointment of Gordon Dirks to conduct a study on private schooling in Saskatchewan examining, among other things, the "quality of education in private schools; funding for private schools; taxation of private school property; home schooling; attendance requirements; parents' rights; and current and projected trends respecting private schools."[2]

"We are commissioning this report because many parents, private school boards and their administrators have asked us to examine the issues surrounding these schools. As well, our provincial directors of education, who are responsible for students' attendance and instruction, are concerned about their responsibility as it relates to private schools," the Minister of Education, Lorne Hepworth, said in announcing the study.

The Minister released the Dirks' Report in December 1987, and announced new policies with respect to private schools on June 27, 1988, as follows:

- That the Government would establish a new system for the regulation and registration of private schools through the provincial Department of Education, that would give private schools a formal legal status; clarify the position of their pupils in terms of compulsory school attendance; and ensure that private schools maintained a high quality of education;

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[1] (1987) 31 Dominion Law Reports (4th) 569.

[2] See Appendix 2 for four news releases on private (independent) schools, dated 13 March 1987, 27 June 1988, 23 January 1989, and 24 October 1989.

- That school property owned by private non-profit groups in Saskatchewan would henceforth be exempt from local property taxation;

- That the Government would increase its capital grants to private high schools from 10 percent to 20 percent of recognized costs;

- That, otherwise, there would be no new operating grants for private elementary or high schools, given their status outside the public education system; and

- That the Government would continue to permit home-schooling, but would hold discussions with school boards and other interested groups in order to work out stronger supervisory procedures for home-schooling.

The Government's policy attempted "to strike a balance between the interests of private schools in our province and the needs of our education system and the public as a whole," the Minister said. In developing policy, the Government faced "competing interests and conflicting perspectives. We have developed a position which I consider responsible and reasonable."

The Minister of Education proceeded to implement these new policies by announcing (on January 23, 1989) his intention to establish an Advisory Board to help develop regulations for private schools; by establishing an Independent Schools Branch in the Department of Education; by appointing Chris Gerrard (who has also served as the Secretariat to the Advisory Board) as the first Director of this Branch, effective July 1, 1989; and by passing amendments to *The Education Act* in August 1989 in order to provide a legislative framework for whatever regulations, policies, and procedures the Board would recommend.

The amendments to *The Education Act*, which now referred to private schools as independent schools, gave the Minister broad powers to register, regulate, and inspect independent schools.[3] In order to operate legitimately in Saskatchewan, the new independent schools would now have to be registered (as opposed to licensed) with the Department of Education. Registration involved a notice of intent to operate, while licensing would have involved seeking permission to operate. Children attending registered independent schools now met the compulsory attendance requirements of *The Education Act*, and the facilities of registered independent schools were now exempt from municipal property taxation.

In consultation with the major partners in Saskatchewan education, the Minister established the representative structure of the Advisory Board: seven representatives from the public education system; seven representing independent schools; five representing the post-secondary/employment sector; a chairperson; two representatives of the Department of Education; and a legal advisor. Each of the organizations represented on the Board were invited to name their own representatives to the Board. Alec Postnikoff, former long-time director of education for

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[3] See Appendix 3 for the amendments to *The Education Act*, August 25, 1989, as these relate to independent schools.

Saskatoon (West) School Division agreed to serve as Chairperson.[4]

In his letter of invitation, while the Minister [illegible] not establish a precise agenda for the Board in terms of recommending regulations, policies and procedures governing the operation of independent schools in Saskatchewan, the Minister did establish the following guiding principles to direct the Board's work:

- Independent schools must provide a quality of education comparable to that of public schools. However, it is recognized that, by their very nature, independent schools are different from public schools. Parents send their children to independent schools in order to achieve objectives which may not or can not be satisfied within the public education system;
- Independent schools must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development;
- Independent schools must not promote values which conflict with the rights, freedoms, and moral principles upon which our society is based.

Prior to the first meeting of the Board on October 10, 1989, the Chairperson, Alec Postnikoff, and the Secretariat, Chris Gerrard, met individually with all the groups represented on the Board in order to discuss the Board's objectives, the Advisory Board process, and issues to put on the agenda. Then at its first meeting, the Board agreed upon the following objectives:

> The objectives of the Board are to make recommendations to the Minister of Education concerning regulations, policies, and procedures governing the operation of independent schools in Saskatchewan:
>
> (1) That respect the liberty of parents to enrol their children in independent schools in order to give their children an education in conformity with their own philosophical convictions;
>
> (2) That protect the public interest in education,
> (a) that all Saskatchewan children have access to (i.e. are not deprived of) a common, generally accepted standard of education; and
> (b) that independent schools do not promote values which conflict with the rights, freedoms, and moral principles upon which our society is based;
>
> (3) That permit students in independent schools to be accepted in the wider society at large for the education that they have achieved at an independent school, whether these students choose
> (a) to transfer to another school;
> (b) to seek employment in the public or private sectors; or
> (c) to pursue post-secondary studies.

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[4] See Appendix 4 for the letter of invitation to the organizations represented on the Board, and Table 1 for the complete membership of the Board.

Also at the Board's first meeting, members of the Board requested clarifications from the Minister concerning whether some issues were or were not within the mandate of the Board to discuss.

The new Minister of Education, Ray Meiklejohn, clarified the mandate of the Board in a letter dated November 27, 1989.[5] With respect to the funding of independent schools, the Minister said:

> No new grants will be paid directly to independent schools for any operating purposes. Boards of education are free to enter into voluntary arrangements with independent schools to provide services such as transportation. However, any incremental costs associated with such services will not be recognized by the Department of Education for grant calculation purposes.

With respect to the constitutionality of the policy framework that the Minister had established for the Board:

> We are satisfied that we are proceeding in a legitimate way and will continue on this basis, recognizing that the policies of any government are potentially subject to challenge on some type of constitutional grounds. In terms of its specific recommendations, the Board should, of course, attempt to ensure that it remains within the relevant existing laws.

With respect to legislation:

> I do not believe the Board should be concerned if any of its recommendations appear to require an amendment to provincial legislation. The Department of Justice will ultimately be responsible for determining which items must be in statute, which can go in regulation, and which can be handled simply as policy statements.

With respect to the internal operation of independent schools:

> I see no problem with such recommendations provided they are designed to facilitate the effective operation of independent schools. . . . It would clearly be unhelpful if the Board were to make recommendations . . . . which would have a significant negative impact on their ability to operate.

With respect to the interface between independent schools and public education systems and organizations:

> I expect that such recommendations will arise naturally out of the Board's discussions. I see no problem with such recommendations provided they are designed . . . . to promote a harmonious relationship with other stakeholder groups. It would clearly be unhelpful if the Board were to make recommendations which would serve to isolate independent schools.

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[5] See Appendix 5.

II. The Advisory Board Process

The Minister's Advisory Board on Independent Schools met once a month for ten months, from October 1989 to July 1990, inclusive, except for May 1990, when it met twice.

At its first meeting on October 10, 1989, the Board agreed, as far as possible, to work on a consensus basis.[1] Where consensus was not achievable, voting would be by majority vote. However, a large (unspecified) majority of Board members had to agree on each recommendation to the Minister. Any dissent would receive extensive attention in order to minimize the extent of dissent at the end of the process. Where the Board could not agree on a recommendation with respect to a particular issue, then several recommendations for dealing with this issue would be presented to the Minister, along with the views and reasoning behind the various options presented.

The Board agreed to a quorum of twelve, comprising at least *four* of the seven representatives from the public education system, *four* of the seven representatives from the independent schools, *two* of the five representatives from the post-secondary/employment sector, and *two* of the four remaining representatives.

The Board established an Executive Committee to oversee the work of the Board and to handle administrative matters, but *not* to make substantive decisions, which remained the sole prerogative of the Board. This Committee comprised Bill Wells and Fred Herron, representing the public education system; Don King and Marge Bailey, representing the independent schools; Gary Bevan, representing the post-secondary/employment sector; and Alec Postnikoff and Chris Gerrard, serving as chairperson and secretariat of the Committee, respectively.

The Board agreed to establish technical committees as it determined were required to carry out its mandate, in order to conduct detailed work on and to present viable alternatives for dealing with particular issues. After reviewing the issues raised during the preliminary meetings, which the Chairperson and Secretariat had held with all the groups represented on the Board, the Board agreed to establish three technical committees: (1) a teacher education, certification, and standards committee; (2) a curriculum, instruction, and evaluation committee; and (3) a student/teacher needs committee. But the Board did not establish either the membership or the mandate of these three committees at its first meeting on October 10, 1989.

Finally, at its first meeting, the Board commissioned the Secretariat to conduct three pieces of research:

- Curricula presently being used in Saskatchewan's independent schools;
- Secondary research on the characteristics of independent schools, including who attends independent schools; and

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[1] See Appendix 6 for the "Objectives and Process" of the Advisory Board, as agreed at the first meeting on October 10, 1989.

- Legislation and regulations pertaining to independent schools in other provinces.

The results of this research were subsequently presented to the Board at its second, third, and fourth meetings, in November, December, and January, respectively.

The Board did not actually establish the membership of the teacher education, certification, and standards committee and the curriculum, instruction, and evaluation committee until its fourth meeting on January 9, 1990; the mandate for these first two committees until its fifth meeting on February 7; and the membership and the mandate of the student/teacher needs committee until its sixth meeting on March 15.

To help the Board establish the mandates of the three committees, at the second and third meetings in November and December, each of the organizations represented on the Board made a presentation to the full Board with respect to (1) their organization's goals and philosophy; (2) their membership and operation; (3) how they perceived their role in Saskatchewan education; and (4) their views on public and independent schools, in the following order (which order was drawn out of a hat):

- Society schools: Sharon Foreman;
- Saskatchewan Teachers' Federation: Fred Herron and Derwyn Crozier-Smith;
- Saskatchewan Association of Private High Schools: Don King;
- Saskatchewan School Trustees Association: Ann Stewardson;
- Seventh-day Adventist schools: Myron Wareham;
- League of Educational Administrators, Directors, and Superintendents: Peter Popowich;
- Saskatchewan Association of Independent Church Schools: Marge Bailey;
- Colleges of Education:[2] Bud Hurlbert and Dennis Dibski;
- Church of God in Christ (Mennonite) schools: Fred Reimer;
- Post-secondary institutions: Ken Smith and Bob Welte;
- Saskatchewan employers/apprenticeship and training: Wendell Dent.

Further to help the Board establish the mandates of the three committees, and to assist the committees with their work, the Board heard the following presentations:

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[2] Colleges of Education refers to both the College of Education at the University of Saskatchewan and the Faculty of Education at the University of Regina.

- Howard McConnell, "Constitutional issues affecting independent schools" (verbal presentation on November 28, 1989; written papers submitted on February 22, 1990, and April 10, 1990);

- Fred Renihan, "Saskatchewan provincial curriculum policy" (November 28, 1989);

- Sharon Foreman, "Curriculum issues from an independent school perspective" (December 12, 1990);

- Dave Wells, "Teacher issues from an independent school perspective" (January 9, 1990);

- Tom Warner, "Cornwall Alternative School" (January 9, 1990);

- Kathie Tenold and Michael Littlewood, "Teacher certification in Saskatchewan" (February 7, 1990);

- Harry Dahl and Margaret Lipp, "Student needs and services provided for special needs students in Saskatchewan" (February 7, 1990);

- Irvin Brunas, "School facilities in Saskatchewan" (March 15, 1990).

At its third meeting on December 12, 1989, the Board agreed to the following guidelines with respect to the membership and mandates for its three committees:

- All committees would be balanced by a matrix of representatives similar to the Board, with *three* representatives from each of the public and independent school groups, one from the post-secondary/employment sector, and one from the "other" group;

- The Chairperson of the Board (Alec Postnikoff) and the Secretariat (Chris Gerrard) would be *ex officio* members of all committees;

- While desirable, it would not absolutely be required that members of the committees would come from the parent Board;[3]

- Each committee would select its own chairperson from among its own members; and

- Each committee would conduct an investigation of each question in its mandate; order the information with respect to the particular question; identify possible solutions; identify the preferred solution; and where there was more than one solution, the reasoning behind the different solutions.

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[3] In the event, all members of the committees were members of the Board, with the exception of Kathie Tenold on the teacher committee, Jim MacIntosh on the curriculum committee, and Harry Dahl on the student/teacher needs committee, all from the Department of Education and each representing the "other" group on the committees.

After this third meeting of the Board, the Chairperson presented a "Proposed Principles of Agreement, Issues, and/or Process" to the Executive Committee. Between the December and January meetings of the Board, each of the four major organizations represented on the Executive Committee -- the SSTA, STF, SAPHS, and SAICS -- were asked to present a proposed list of questions to appear on the mandates of the three technical committees. Subsequently, the Secretariat consolidated these questions, along with questions arising from his review of legislation and regulations in other provinces, into four categories: teacher issues, curriculum issues, student/teacher needs, and other issues. At meetings on February 6, the first two committees condensed these questions into a workable mandate, which the Board approved, with slight revisions, on February 7. (See Tables 3.1 and 3.2). Subsequently, the Board approved the mandate for the student/teacher needs committee and the other issues on March 15. (See Tables 3.3 and 3.4.)

The teacher committee met seven times between February 6 and April 24, inclusive; the curriculum committee four times; and the student/teacher needs committee twice. The teacher and curriculum committees presented preliminary reports to the Board on March 15; all three committees presented final reports at the Board's seventh meeting on April 25.

Basically, the committee process worked well. The three committees were able to reach a consensus on most issues. At its sixth meeting on March 15, the Board gave preliminary feedback to the teacher and curriculum committees. At its seventh meeting on April 25, the Board approved most of the recommendations coming from the committees. In the nature of things, some of the "other issues" came up during meetings of the first three committees, but the Board itself considered and approved recommendations with respect to these other issues on April 25 and May 15.

Table 2.1

Teacher Education, Certification, and Standards Committee: Membership and Mandate

Bill Wells, Fred Herron, Dennis Dibski (Chairperson), Dave Wells, Myron Wareham, Fred Reimer, Ken Smith, Kathie Tenold (Saskatchewan Education), Alec Postnikoff, Chris Gerrard (Secretary)

(A.1) Will all teachers in independent schools be required to hold a valid Saskatchewan teacher's certificate?

(A.2) What accommodations, if any, need to be made to existing criteria and processes respecting teacher certification in Saskatchewan to make them responsive to the needs of independent schools?

(A.3) How should the recommendations be sensitive to those independent schools who emphasize the faith of their teachers as a qualification for teaching?

(A.4) What recommendations concerning teacher preparation -- both courses of study and practicum -- should be made to the two Colleges of Education?[4]

(A.5) Under what circumstances can STF membership be extended to teachers in independent schools?
  (a) What services can be provided?
  (b) What changes would be required to legislation or STF bylaws?

Meetings: February 6, February 15, March 13, March 15, March 30, April 11, and April 24 (joint with the other two committees).

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[4] Colleges of Education refers to both the College of Education at the University of Saskatchewan and the Faculty of Education at the University of Regina.

Table 2.2

Curriculum, Instruction, and Evaluation Committee: Membership and Mandate

Ann Stewardson, Derwyn Crozier-Smith, Peter Popowich (Chairperson), Sister Rosetta Reiniger, Marge Bailey, Sharon Foreman, Bob Welte, Jim MacIntosh (Saskatchewan Education), Alec Postnikoff, Chris Gerrard (Secretary)

(B.1) What regulations should there be with respect to the days and hours of operation of independent schools?

(B.2) What accommodations, if any, need to be made for independent schools who cannot accept Saskatchewan's goals of education, in part or in total?

(B.3) What accommodations, if any, need to be made for independent schools who cannot accept specific Saskatchewan government curricula, in part or in total (e.g. Division III health or Grade 8 social studies)?
  (a) What process will be developed for approval of curricula in independent schools?
  (b) What criteria will be developed for approval of curricula in independent schools?

(B.4) What accommodations, if any, need to be made for independent schools with respect to programs, textbooks, and other resource materials?

(B.5) What accommodations, if any, need to be made for independent schools with respect to religious education in independent schools?

(B.6) What methods of accountability should be put in place to ensure adequate instruction in independent schools?

(B.7) What procedures should be put in place in order to recognize and/or assess the academic achievement of students in independent schools for purposes of transfer to other schools, secondary standing, and post-secondary entrance?

(B.8) What alternative educational experiences, if any, need to be recognized in lieu of compulsory attendance?

(B.9) What access will independent schools have to in-service for curriculum implementation provided by Saskatchewan Education?

Meetings: February 6, March 8, March 12, and April 24 (joint with the other two committees)

Table 2.3

Student/Teacher Needs Committee: Membership and Mandate

Derwyn Crozier-Smith, Peter Popowich, Bud Hurlbert, Don King, Marge Bailey, Myron Wareham, Gary Bevan (Chairperson), Harry Dahl (Saskatchewan Education), Alec Postnikoff, Chris Gerrard (Secretary)

(C.1) What regulations should there be with respect to the facilities of independent schools?

(C.2) What recommendations, if any, should there be with respect to the transportation of pupils attending independent schools?

(C.3) What recommendations, if any, should there be with respect to driver education for pupils attending independent schools?

(C.4) What accommodations, if any, should be made with respect to the needs of special needs children in independent schools:
  (a) psychological testing?
  (b) speech and language services?
  (c) other?

(C.5) What recommendations, if any, should be made with respect to continuing professional contact between teachers in public and independent schools?

(C.6) What access should be available to common teacher resources:
  (a) curriculum guides?
  (b) instructional resources?
  (c) Book Bureau?
  (d) other?

(C.7) What recommendations, if any, should be made with respect to the welfare of teachers in independent schools?

Meetings: April 12, April 24 (joint with the other two committees).

Table 2.4

Other Issues[5]

(D.1) What statements of principle, if any, should there be in the independent school regulations with respect to the rights, interests, and responsibilities of parents, the government, and children?

(D.2) What are the recommended eligibility criteria for the different categories of independent schools?

(D.3) What additional recommendations should be made with respect to the relationship between the Department of Education and independent schools:
    (a) administration of independent school policies?
    (b) accountability of independent schools to the Department?
    (c) services provided by the Department to independent schools?
    (d) reporting requirements?
    (e) pupil records?

(D.4) What recommendations, if any, should be made with respect to the settlement of disputes arising from, say, registration, school accreditation, teacher certification, or suspension of students from independent schools?

(D.5) What recommendations, if any, should be made with respect to the access of pupils to independent schools?

(D.6) What additional recommendations should the Board make to other stakeholder groups represented on the Board relative to their relationship with independent schools?

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[5] These issues were considered by the entire Board on April 25 and May 15, 1990.

III. Guiding Principles

The Advisory Board began its work on October 10, 1989, by formulating its objectives in line with the policy framework established by the Minister, in various news releases and in the letters of invitation to name representatives to the Board.

Even while the Board was considering its objectives, however, some members asserted that all statutory and regulatory enactments, including provincial education law, must now be developed within the new Canadian constitutional and legal framework, epitomized by *The Charter of Rights and Freedoms*, 1982. Accordingly, they asserted that the Board's recommendations to the Minister should also reflect this new constitutional and legal framework, and the Board requested its legal advisor, Professor McConnell, to make a presentation to the Board on "Constitutional issues affecting independent schools" at its second meeting on November 28, 1989.

Then, in the course of its deliberations, the Board developed a number of operational principles surrounding its decisions, which, taken together, represent an operational framework.

The policy framework, the constitutional and legal framework, and the operational framework, all of which guided the Board in making its recommendations, are the subject of this chapter. While the distinction between these three frameworks is not water-tight -- some principles could appear in more than one category -- nonetheless, the Board has found these distinctions to be useful. The complete list of 29 principles under these three headings is found in Table 3.1 at the end of this chapter.

Before beginning, this chapter simply could not have been written in its present form without the contribution of Professor McConnell to the Board, and in particular without his two written submissions, "Constitutional issues affecting independent schools" (February 22, 1990), and "Statements of principles with respect to the rights, interests, and responsibilities of parents, the government, and children" (April 10, 1990). For this chapter, Professor McConnell has given the Board permission to quote freely from these submissions without generally indicating such in quotation marks.

Policy Framework

1. **The Government of Saskatchewan has a compelling interest in the education of all Saskatchewan children, of which the primary vehicle is the public education system in its two dimensions, the public schools and the separate schools.**

The Minister of Education has stated this principle many times, among other occasions, during the legislative debate on Bill 70, "An Act to amend *The Education Act*", which enabled the Minister to register, regulate, and inspect independent schools.[1] That the Minister was exercising his responsibility to put in place a legal framework for the operation of independent schools in Saskatchewan did not detract from the Minister's primary responsibility to the public education system.

Indeed, the main purpose of *The Education Act* is to establish a legislative framework for the operation of public and separate schools in Saskatchewan as "public authorities". As such, *The Education Act* lays out a whole congeries of duties and powers, requiring and enabling public boards of education to do certain things. As statutory creations, they can typically do only those things which the parent Act authorizes them to do.[2] Established under *The Education Act*, they are clothed only with such powers as are conferred upon them by statute, or perhaps in rare instances by common law.[3]

The Minister of Education, also, only has such duties and powers conferred on him by statute, which in Saskatchewan's *Education Act* are generally found in sections 9 and 10. For example, the recent amendments to *The Education Act*, subsection 10(1), permit the Minister to:

(q) make provision for the registration of independent schools; and
(r) make provision for the inspection of independent schools.

The origin of Canadian public education can be traced back to the establishment of common schools as "public authorities" in the United Province of Canada after 1841. Prior to that time, all schools had been private schools, operated preponderantly by the Anglican, Roman Catholic, Presbyterian and Methodist churches.

From the beginning, provision was made for the establishment of both common schools and separate schools, the latter operated by adherents of the minority faith, whether Protestant or

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[1] *Hansard*, Twenty-first Legislature of the Legislative Assembly of Saskatchewan (August 24, 1989), p. 4552. The actual phrase, "compelling interest", comes from *Jones* v. *The Queen* (1987) 31 Dominion Law Reports (4th) 592.

[2] For such entities to go outside of the parameters of their statutory authorization would violate the principle of "the rule of law", ef. *Roncarelli* v. *Duplessis* (1959) Supreme Court Reports 121.

[3] Cf. L'Heureux-Dube J. in *Knight* v. *Indian Head S.D. No. 19* (1990) 69 Dominion Law Reports (4th) 489 (Supreme Court of Canada).

Roman Catholic, whenever the majority of the minority faith in a particular common school district decided to establish a separate school district as well.

This was the formative time of the establishment of national systems of education in both Europe and North America. At this time, Western governments began to regard mass education as an instrument of national policy. A reality of this new educational climate in Canada was that private schools were not equal to the task of providing education for everybody. Also reflecting the spirit of that age, the resulting educational curricula represented a synthesis of Christianity and Enlightenment thought.

With Canadian Confederation in 1867, section 93 of *The Constitution Act*, 1867, both conferred legislative jurisdiction over education on the provinces and gave formal constitutional recognition to a pluralistic standard of education in Canada. For section 93 provided that no provincial law should prejudicially affect denominational school rights or privileges existing by law in a province at the union. Whenever Ontario or Quebec, in fact, derogated from the rights and privileges of such defined religious minorities, the federal cabinet had the remedial power to restore such rights or privileges, intervening in an area of provincial jurisdiction with a federal measure reinstituting the pre-existing situation. As Professor McConnell states, "that such an extraordinary recourse would be contemplated by federal action in a primary area of provincial jurisdiction shows the great sensitivity with which the Fathers of Confederation regarded minority religious educational rights."

The Northwest Territories Ordinance of 1884 was the first legislation permitting the establishment of public schools in what is now Saskatchewan. Modelled on the Ontario legislation, it also made provision for both public and separate schools. On entering Confederation in 1905, section 17 of *The Saskatchewan Act* continued a framework for both public and separate schools. Section 17 supplemented section 93 with some entirely new provisions applicable to Saskatchewan, thereby spelling out the rights associated with separate schools with greater specificity than for some of the other provinces.[4]

2. From either an historical, legal, or practical perspective, independent schools have the right to exist in Saskatchewan.

This is a direct quotation from the Minister's letter of invitation to the organizations represented on the Independent Schools Advisory Board to name their representatives to the Board.

From an historical perspective, independent schools pre-dated public schools in what is now Canada. The establishment of public schools did not take away the right of denominations, churches, or societies of parents to establish independent schools for their children. For example, during the Manitoba schools crisis of the 1890s, after the province of Manitoba abolished its Roman Catholic separate school system in 1890, the Judicial Committee of the Privy Council held in *Winnipeg* v. *Barrett*:

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[4] See Appendix 11, R. M. Beaton and Jim Russell (Gauley & Co.), "Re: Minister's Advisory Board on Independent Schools" (Letter to Fred Herron and Derwyn Crozier-Smith, May 11, 1990).

> Notwithstanding The Public Schools Act, 1890, Roman Catholics and members of every other religious body in Manitoba are free to establish schools throughout the province; they are free to maintain their schools by school fees or voluntary subscriptions; they are free to conduct their schools according to their own religious tenets without molestation or interference. No child is compelled to attend a public school. No special advantage other than the advantage of a free education in schools conducted under public management is held out to those who do attend.[5]

Also in *Jones* v. *The Queen*, Justice La Forest stated:

> It would be to negate history to fail to recognize that for many years the individual and the church played a far more significant role in the education of the young than the State. And when the State began to take the dominant role, it had to make accommodations to meet the needs and desires of those who had dissentient views. The provisions regarding separate schools in the Constitution are an example. But our historical experience is by no means confined to these arrangements. One need only refer to the serious social and political crises that developed in this country in the latter part of the 19th century when governments sought to establish common schools in the various provinces. These attempts gave rise to major political issues, and compromises inevitably followed. Many of these continue to this day.[6]

From a legal perspective, one of the clearest recent statements with respect to the rights of independent schools to exist can be found in *Caldwell et al.* v. *Stuart et al.*[7] In respect of a Roman Catholic independent school in Vancouver, the Supreme Court of Canada held:

> There may be no specific enactment of the Legislature of the Province of British Columbia which confers this right. It is, however, an unquestioned fact that Roman Catholic schools have existed in British Columbia since the Province was formed, beside, but separate from, the public school system. For many years, they have been entitled to public financial support, and attendance of pupils has been recognized as a substitute for compulsory attendance at public schools. There can be no serious question that Roman Catholic schools, having their special nature, have functioned and continue to function lawfully in the Province.

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[5] (1892) Appeal Cases 445 (Judicial Committee of the Privy Council) 457-58. Decisions of the Judicial Committee of the Privy Council and the Supreme Court of Canada are binding on all provinces in the case of analogous statements in different local statutes. So, for example, the *Jones* case would generally be binding on all provinces since compulsory attendance laws are generally analogous in the different provinces. Decisions of provincial courts, including provincial courts of appeal, are simply persuasive in other provinces. The stature of a particular provincial court, the court's reasoning process, and the uniqueness of a particular case all have a bearing on the persuasiveness of a particular decision in another province.

[6] *Supra*, 591-592.

[7] (1984) 2 Supreme Court Reports 603

3. The Government has the interest and the responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan.

While some independent schools have operated legitimately in Saskatchewan ever since the province was founded, regulations, policies, and procedures that clearly define the legal status of all private schools have not been fully developed. Indeed, the main task of the Independent Schools Advisory Board has been to recommend a comprehensive legislative and regulatory framework for the operation of independent schools in Saskatchewan.

In his news release of June 27, 1988, the Minister of Education explicitly accepted the responsibility of establishing such a system for the regulation and registration of independent schools that would:

- Resolve the legal status of all independent schools;
- Clarify the position of their pupils in terms of compulsory attendance; and
- Ensure that independent schools maintain a high quality of education.

At its first meeting on October 10, 1989, the Board added the following responsibilities to this list -- that the Minister make regulations governing the operation of independent schools:

- That respect the liberty of parents to enrol their children in independent schools in order to give their children an education in conformity with their philosophical convictions; and
- That permit students in independent schools to be accepted in the wider society at large for the education that they have achieved at an independent school, whether these students choose
  (a) to transfer to another school;
  (b) to seek employment in the public or private sectors; or
  (c) to pursue post-secondary studies.

These two responsibilities are examples of the principle that, whenever a "right" is proclaimed, someone in society has a corresponding "responsibility" to bring effect to this right. Often that "someone" is the government.

In *Jones* v. *The Queen*, Justice La Forest refers to the "compelling interest" of the state in the education of its citizens, as follows:

> Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society. From an early period, the provinces have responded to this interest by developing schemes for compulsory education. Education is today a matter of prime concern to government everywhere.

Activities in this area account for a very significant part of every provincial budget.[8]

In his news release of January 23, 1989, and his letter of invitation to name representatives to the Advisory Board, the Minister expressed the state's interest in the education of children as follows:

- That all Saskatchewan children have access to (i.e. are not deprived of) a common, generally accepted standard of education; and
- That independent schools do not promote values which conflict with the rights, freedoms and moral principles upon which our society is based.

At its first meeting on October 10, 1989, the Board concurred with these statements.

4. In order to operate legitimately in Saskatchewan, independent schools will be required only to be registered and not licensed.

In his *Review of Private Schooling in Saskatchewan*, Gordon Dirks examined this issue in some detail.[9] At the time of his study, Saskatchewan's *Education Act*, sections 155 and 156(a), required that pupils of compulsory school age attend a public or a separate school or be "under a program of instruction approved by the director or superintendent at home or elsewhere."

According to the Dirks' Report, the Supreme Court of Canada upheld the constitutionality of this requirement in *Jones* v. *The Queen*. The Court held, in the Alberta context, that requiring parents of children in private schools either (1) to seek approval from the Department of Education for the operation of their private school, or (2) to seek a certificate of efficient instruction from a Department of Education inspector or superintendent, either did not violate Larry Jones' freedom of religion, or represented a reasonable limit on his freedom of religion that was "demonstrably justified in a free and democratic society".

Notwithstanding the *Jones* decision, the Dirks' Report recommended a less obtrusive means of ensuring the state's legitimate interest in the education of Saskatchewan children. Finding clause 156(a) of Saskatchewan's *Education Act* to be "impractical and divisive", the Report recommended instead

> a private school regulatory mechanism which places the onus for inspection upon Department of Education officials, specifies criteria to be used when inspecting private schools, does not compel locally-employed Directors of Education to inspect private schools, places the burden of proof upon the Department of Education to persuade a competent third-party tribunal or court that a particular private school does not meet the test of satisfactory instruction and requires private schools to provide the

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[8] *Supra*, p. 592. The use of the term "interest" is deliberate. Strictly speaking, the state does not possess "rights", it possesses "interests". Individuals, not the state, possess "rights".

[9] (September 1987), pp. 43-46.

> Department with the necessary statistical and identifying information respecting the private school and its pupils.[10]

Also, subsequent to the *Jones* case, the Government of Alberta amended its *School Act* in 1988, providing for a less obtrusive registration process, as opposed to a licensing process, for schools like Larry Jones'. The Alberta Government was influenced both by the *Jones* decision itself and by the fact that Larry Jones chose to go to jail in October 1987 rather than acknowledge the government as the source of his right to educate his children in accordance with his religious convictions. To accept that a public board of education could grant him permission to carry out his God-given duty would be, he submitted, to accept the converse, that it could also refuse him such permission.

In his news release of June 27, 1988, the Minister of Education accepted the recommendation of the Dirks' Report for a registration and inspection process for the newly-established independent schools,[11] and the provincial Legislature amended *The Education Act* accordingly in August 1989. Registration involved a notice of intent to operate an independent school; licensing would have involved seeking permission to operate. Also, in the case of church-based schools, registration was more consistent with the principle of the separation of church and state. A license being the power to permit somebody to do something or to forbid somebody from doing something, only a higher power could license a lower power. By requiring independent schools only to be registered, the Minister thereby avoided the question of whether the state could legitimately license church-based schools, which, depending on one's interpretation, the Supreme Court did or did not answer in the *Jones* case.

However, the Dirks' Report did not recommend, nor did the Minister accept, that the Department of Education should register anything as an independent school, for example, a vacation Bible school or a summer camp. A major task of the Advisory Board has been to define the minimum generic requirements for a registered independent school in terms of such things as school structure, days and hours of operation, goals of education, school curricula, qualifications of teachers, and school facilities. For example, whether a teacher is a teacher if the teacher does not possess a valid Saskatchewan teacher's certificate has been a major issue addressed by the Board.

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[10] *Ibid*, p. 46.

[11] The eight historical high schools have, of course, operated legitimately in Saskatchewan for many years. These are Athol Murray College of Notre Dame, Caronport High School, College Mathieu, Luther College, Lutheran Collegiate Bible Institute, Rivier Academy, Rosthern Junior College, and St. Angela's Academy.

5. The costs of operating independent schools will continue to rest with parents who choose this form of education for their children. There will be no new operating grants for independent schools beyond those currently provided to the historical high schools.

The Minister of Education stated this principle, which follows directly from principle #1, in his news release of June 27, 1988 -- contrary to the Dirks' Report's recommendation of an annual materials/equipment grant to independent schools of $50.00 per pupil. The Minister reiterated the principle in his news release on January 23, 1989, during the legislative debate on the amendments to *The Education Act*, and in his letters of invitation to name representatives to the Advisory Board.

During the legislative debate, the Minister also made it clear that the Government was "grandfathering", not so much the eight historical high schools, as the regulations under which the eight schools received operating and capital grants. If a new high school came along that met the same criteria -- in operation for not less than five years, not less than 60 students enroled in Grades 9 to 12 during each of the preceding two years, and meeting the same requirements as public schools in respect of courses of study, qualifications of teachers, operating schedules, and supervision -- then such a school would also receive operating grants.[12] Professor McConnell concurs that this is the only acceptable constitutional position.

At the request of the Board, in his letter of November 27, 1989, the Minister further clarified his position on funding as follows:

> No new grants will be paid directly to independent schools for any operating purposes. Boards of education are free to enter into voluntary arrangements with independent schools to provide services such as transportation. However, any incremental costs associated with such services will not be recognized by the Department of Education for grant calculation purposes.

The Minister's guidelines permitted the Department itself to provide some services such as supervision and curriculum guides directly to independent schools, but not services that would represent, in effect, operating grants to independent schools. In considering issues and formulating recommendations, the Board encountered this constraint on a number of occasions.

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[12] *Hansard*, Twenty-first Legislature of the Legislative Assembly of Saskatchewan, Third Session (August 24, 1989), p. 4553. See, also, page 76 below.

6. By their very nature, independent schools are similar to public schools in some respects and different in others. Parents enrol their children in independent schools in order to achieve objectives which may not or can not be satisfied within the public education system.

This is virtually a direct quotation from the Minister's letter of invitation to the organizations represented on the Independent Schools Advisory Board to name their representatives to the Board.

Public, separate, and independent schools all exist to assist parents in educating their children. All have a similar structure -- a board of education, a director and/or principal, teachers, goals, curricula, etc. But, while public schools approach the spiritual goals of education[13] in the context of a pluralistic society, separate and independent schools generally cater to the unique wishes of a particular group of parents and children, generally philosophically or religiously-based.

Saskatchewan's 1901 *School Ordinance*,[14] which makes provision for religious instruction in sections 137-139, is still the relevant educational law with respect to religious instruction in the province's public and separate schools. But, in response to general societal trends, most public school boards no longer exercise their discretionary authority with respect to religious instruction under this law. Indeed, two recent Ontario cases call into serious question the constitutionality of these provisions in respect of public schools, although not in respect of separate schools.

In *Zylberberg* v. *Sudbury Board of Education*,[15] the Ontario Court of Appeal held that local regulations requiring public schools to open and close each day with religious exercises, including the Lord's Prayer (subject to a right of non-participation for the children of non-concurring parents) were of no force and effect.

In *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)*,[16] the Ontario Court of Appeal further prohibited religious instruction in public schools in Elgin County, where more than 90 per cent of the affected children belonged to Christian denominations.

The two rulings have not been appealed to the Supreme Court of Canada. Hence, even though they are authoritative decisions of the highest court in Ontario, they are simply persuasive, not binding, in other provinces, even in Saskatchewan whose early educational legislation was derived directly from Ontario. Because of section 17 of *The Saskatchewan Act*, which supplements section 93 of *The Constitution Act*, it is not altogether clear what the courts would rule in the case of religious exercises and religious education in Saskatchewan's public schools.

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[13] This is a direct reference to the spiritual goals of education for Saskatchewan: (1) To seek an understanding of the purpose and worth of human existence; (2) To develop a knowledge of God; and (3) To respect family, religion, and culture in a pluralistic society. See Table 6.1.

[14] Consolidated Ordinances, c. 75, section 1.

[15] (1989) 52 Dominion Law Reports (4th) 577 (Ontario Court of Appeal).

[16] (1990) 71 Ontario Reports (2d) 341 (Ontario Court of Appeal).

Nonetheless, the Ontario Court of Appeal ruled that provisions for parents to exempt their children either from religious exercises or from the teaching of religion were not sufficient protections of freedom of conscience and religion, since subtle pressures existed in such contexts to make children of religiously dissenting parents conform.[17]

The two rulings probably further mean that Ontario's public schools cannot teach academics from an overtly religious point of view, such as a Christian point of view. While the Ontario Court of Appeal has said that schools may teach about religion as, say, a sociological phenomenon that impacts our culture, they cannot teach religion *per se*. From a doctrinal point of view, their approach must be strictly neutral.

Parents of children in religiously-based independent schools generally desire that their schools hold regular religious exercises and religious instruction as well as teach academics from a religious philosophical point of view. Saskatchewan parents, who desire all three of these from a religious point of view other than Roman Catholic, have no choice for their children except independent schools or home-schooling.

Saskatchewan legislation has made provision for the establishment of separate schools as public authorities, if the majority of the minority of electors, whether Protestant or Roman Catholic, in a particular school district, decides to establish a separate school, and will soon be making provision for fransaskois schools, but has not made provision for other types of schools as public authorities. Furthermore, there is provision for only one separate school division coterminous with each public school district, and a Protestant separate school must be a pan-Protestant school, comprising all Protestant denominations, not a school affiliated with a particular Protestant denomination.[18]

This raises two interesting questions:

- Are the provinces of Ontario, Alberta, and Saskatchewan (which currently provide for Roman Catholic separate schools) now obligated to make provision for the establishment of additional religiously-based schools as public authorities (which would therefore be publicly funded), say, either pan-Protestant schools or schools affiliated with a particular Protestant denomination?

- If not, are these provinces obligated to fund religiously-based independent schools equitably with public schools?

On the basis of the 1987 Supreme Court decision affirming, on constitutional grounds, the right of the Province of Ontario to provide full funding to the end of high school for the Roman Catholic separate school system in the province,[19] Professor McConnell answers both questions in the negative.

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[17] Accordingly, the rulings probably also mean that provisions to exempt children from attendance at controversial classes like family life education are not sufficient protections either.

[18] In *Hirsch* v. *Protestant School Commissioners of Montreal* [1926] Supreme Court Reports 246, at p. 255, the Supreme Court of Canada defined "Protestant" as follows: "It is not synonymous with non-Catholic, in that it excludes all persons who do not profess to be Christians; and of these it includes only such as accept what are generally regarded as the principles and doctrines of the Reformation of the 16th Century."

An issue raised by some of the intervening private schools in the latter case was whether the extension of funding to the final two years of Roman Catholic high schools in Ontario would derogate from the "equality rights" of independent schools under section 15(1) of *The Canadian Charter of Rights and Freedoms*, which did not receive similar public funding. In deciding the case, the Supreme Court held that section 93, under which the increased Roman Catholic funding could be validly maintained, was an implied exception to *The Charter* provisions on "equality rights", since it formed part of the "Confederation bargain" without which the provinces of Ontario and Quebec would not have entered the federation in 1867.[20] Accordingly, to give section 15(1) priority over section 93 would countervail unacceptably a constitutional provision from which, on historical grounds, there should be no derogation.

Also, the different legal status of independent schools as "not public authorities",[21] implies that governments are not legally obligated to fund independent schools. When legislation makes provision for the establishment of public authorities, the same legislation usually makes provision for the financing of such authorities. The simple recognition of independent schools in legislation does not carry with it the same obligation for funding.

However, if the government funds a certain category of independent schools, such as the historical high schools, in accordance with certain criteria, while it would not be required to fund all independent schools equally, it would be required to fund all those that met the same criteria equally.

In other words, the Minister of Education can rightly be satisfied, as he said in his letter of November 27, 1989, that he is "proceeding in a legitimate way". Pending further Supreme Court interpretations of section 15(1) of *The Charter*,[22] the Minister's policy framework for the Board, in particular, principle #5 above, is, at least for the time-being, constitutional.

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[19] *Ref. re An Act to Amend the Education Act*, (1987) 1 Supreme Court Reports 1148, 40 Dominion Law Reports (4th) 18.

[20] *Ibid*, p. 60.

[21] See principle #15 below.

[22] While it is true that the 1987 Ontario Catholic funding case mentioned above did not uphold the challenge by private (independent) schools, under s. 15(1), either to receive equivalent funding or to have the legislation rescinded, that particular case has to be seen in its peculiar context. The Supreme Court did not hold that private schools would not, in different circumstances, be entitled to funding, because it never reached that issue. It held, merely, that under section 93 of *The Constitution Act*, certain defined denominational rights took such priority over sections 2(a) and section 15(1) of the Charter that those provisions would not even be considered, leaving the Catholic school system, relatively speaking, in an unassailable position.

As Professor McConnell says,

> What occurs in *The Charter* is a whole system of rights or freedoms, all of which must be read together. With respect to education there is "freedom of conscience and religion" in s. 2(a); the right to "life, liberty and security of the person" in s. 7; various equality rights in s. 15; minority language educational rights in s. 23; the important proviso in s. 26 that enumerated rights do not detract from other rights or freedoms (arguably, parental rights to raise and educate children in accordance with their religious beliefs) which are not expressly enumerated; the multiculturalism provision, s. 27, which has pluralistic cultural and religious implications; and s. 29, which enshrines historic denominational school rights such as those in s. 93 of *The Constitution Act*, 1867. Whenever a conflict arises between the above sections, or between such sections and other legal provisions, one must resort to interpretation as in the Ontario Catholic secondary school ruling to determine which of the opposed provisions prevails.

It is noteworthy that section 2(a) of *The Charter*, which is confirming a secularistic trend in the public school system, is the same one that guarantees parents' rights to provide for the education of their children in accordance with their religious convictions by enroling them in independent religiously-based schools.

With respect to the Board's deliberations, these considerations had important implications for its recommendations in respect of curriculum in independent schools. Given the secularistic trend in public education, courses and programs developed for public schools are not necessarily going to be appropriate for a religiously-based school. For parental choice to be meaningful, the state has to acknowledge certain freedoms for independent schools in respect of curricula, courses, and programs.

7. Independent schools must provide a quality of education comparable to that of public schools.

The Minister of Education explicitly stated this principle, along with principles #8 and #9, in his news release of January 23, 1989, announcing his intention to establish an Advisory Board to help develop regulations for independent schools.

In the light of principle #6, "comparable" clearly does not mean "the same". It does not mean that independent schools must be mere replicas of public schools. Parents enrol their children in independent schools in order to achieve objectives which may not or can not be satisfied within the public education system. They will not continue to pay extra to enrol their children in an independent school if they do not perceive that their particular independent school is identifiably different, in some way, from the local public school. Furthermore, Canada prides itself on being a multicultural mosaic, not a melting pot. Canadian society would benefit less from the richness and diversity provided by independent schools if independent schools became mere replicas of public schools.

However, the Board's curriculum committee concluded that principle #7 does mean that the product of one system should be recognizable to the other. Students should be able to transfer from one system to another with a minimum of difficulty. Graduates of the two systems should possess a similar level of academic proficiency.

Independent schools can not be schools that offer solely religious instruction, solely language instruction, solely a program of social or cultural activities, or solely a program of recreational or athletic activities.[23] Independent schools should cover essentially the same academic subjects, and essentially the same academic content, albeit, if they choose, from a different religious or philosophical perspective, for, as Professor McConnell has indicated, a generally accepted standard of education in Canada has always been, since the foundation of the first public schools after 1841, a pluralistic standard of education.

8. Independent schools must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development.

While principle #7 has more to do with educational outcomes, this principle has more to do with educational inputs.

Even with respect to this principle, however, there exists a plurality of generally accepted teaching principles. In his *History of the Western Educational Experience*, Gerald Gutek identifies more than a dozen legitimate, but different approaches to education in our educational tradition. "Each major cultural period in the Western experience can be characterized by an ideal type who might be considered that era's concept of the educated man."[24] However, in his opinion, two dominant and recurring schools of thought, called by different names in different ages, are classical liberal education and progressive education.

For the *Report of The Commission on Private Schools in Ontario*, 1985, Mark Holmes, Professor of Educational Administration at the Ontario Institute for Studies in Education, identified five different philosophical approaches found in education today:[25]

- Classicism, Judaism and Christianity -- Traditionalism in Education;
- Rousseau -- Unfettered Choice and Individual Development;
- Pragmatism -- Dewey and the Progressive Movement;
- Utilitarianism -- Education with Positive Consequences; and

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[23] This particular list is taken from the British Columbia *Independent School Act*, 1989, which specifically excludes such schools as independent schools.

[24] (Prospect Heights, Illinois: Waveland Press, 1972), p. 8.

[25] Mark Holmes, "The Funding of Private Schools in Ontario: Philosophy, Values and Implications for Funding," in Bernard J. Shapiro, Commissioner, *The Report of The Commission on Private Schools in Ontario* (October 1985), pp. 109-151.

- Subjectivist Existentialism.

In his opinion, while the dominant philosophies among today's public schools (leaving aside the separate schools) are pragmatism and utilitarianism, the dominant philosophies among today's independent schools are Classicism, Judaism, and Christianity.

Saskatchewan's new Core Curriculum draws from a number of these areas. For example, the Adaptive Dimension of Core Curriculum specifically provides flexibility to schools and teachers to individualize instruction in order to meet the variety of students' needs. Among other things, curriculum guides will now "suggest activities to reinforce and to enrich the goals and learning objectives throughout each of the required areas of study." Policies will be developed "regarding alternative educational programs for exceptional children and the relationship of these programs to the core curriculum."[26]

9. Independent schools must not promote values which conflict with the rights, freedoms, and moral principles upon which our society is based.

This principle leads to the fuller discussion of the rights, interests, and responsibilities of parents, the government, and children in the next section on the constitutional and legal framework. It will suffice to say here that, while Canadian parents generally enjoy the freedom of conscience and religion, among other things, under section 2(a) of *The Charter*, to educate their children in accordance with their religious convictions, such freedom is also subject, under section 1 of *The Charter*, "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." That is, it is "subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."[27]

While a degree of educational diversity is clearly a public good, it is only a public good so long as the graduates of different types of schools can still live peaceably together in the same society. Taken to an extreme, educational anarchy is probably worse than total educational conformity. Independent schools should not be permitted to promote such things as racial or ethnic superiority, religious intolerance, social change through violent action, or sedition.[28] Rather, both public and independent schools should be promoting "understanding and relating to each other."[29]

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[26] Saskatchewan Education, *Core Curriculum Plans for Implementation* (December 1987), p. 8.

[27] *Regina* v. *Big M Drug Mart Ltd.* (1985) Supreme Court Reports 97-98.

[28] This particular list is also taken from the British Columbia *Independent School Act*, 1989, which specifically prohibits independent schools that promote or foster such doctrines, in theory or in practice.

[29] This is a specific reference to the third of the nine categories of the goals of education for Saskatchewan: (1) To act on the belief that each individual is worthwhile; (2) To base actions on the recognition that people differ in their values, behaviours, and life styles; (3) To interact and feel comfortable with others who are different in race, religion, status, or personal attributes; and

10. Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, parents have the right and the responsibility to provide for the education of their children in accordance with their religious convictions.

The principle has been stated in many forms and in many places, such as *The Universal Declaration of Human Rights*, section 26(3).[30] The particular phraseology "in accordance with their religious convictions" is the one used by Mr. Justice La Forest, writing for the majority, in *Jones* v. *The Queen*.[31]

Based on *The Charter*, the common law, and international declarations to which Canada has assented, it is indisputable that parents have this right.

In *The Charter*, it is noteworthy that freedom of conscience and religion -- which, in an elementary and secondary school setting, is primarily a right exercised by parents on behalf of children -- is enshrined in section 2, subtitled "fundamental freedoms", which section enumerates the first such freedoms found in the whole document. Arguably the rights of freedom of conscience, religion, assembly, and expression set out therein are logically prior to all the other rights and freedoms which come later. Without observance of these initial freedoms, all the others would disintegrate. Such freedoms are part of the societal consensus reflecting a basic toleration of minority opinions and a right to dissent.

Complementary support for the rights of parents to educate and give moral instruction to their children may also, arguably, be found in section 26 of *The Charter* which reads: "The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada." Insofar as parents have historically enjoyed a right to rear and educate their children, this parental right should receive sustenance from this provision.

Even before *The Charter*, and before the establishment by law of provincial educational systems in nineteenth-century Canada, this parental right existed in common law, and can be supported on natural law premises as in *Chabot* v. *Lamorendiere*, where the Quebec Court of Appeal held that it was legally impermissible to impose Roman Catholic religious instruction on a Jehovah's Witnesses' child.

> If these rights find their source in positive law, they can be taken away. But if, as they do, they find their existence in the very nature of man, then they cannot be taken away,

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(4) To develop a sense of responsibility toward others. See Table 6.1.

[30] "Parents have a prior right to choose the kind of education that shall be given to their children."

[31] *Supra*, p. 593.

and they must prevail should they conflict with the provisions of natural law.[32]

Recent international covenants have reinforced the aforesaid right. Article 18(4) of *The International Covenant on Civil and Political Rights*[33], affirms, for example, the liberty of parents "to ensure the religious and moral education of their children in conformity with their own convictions". Article 13(3) of *The International Covenant on Economic, Social and Cultural Rights*[34] lays out a similar right for parents:

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

The above-mentioned Conventions which came into force for Canada on August 19, 1976, now form part of international law, and in international law are part of the common law of Canada.[35] While a local statute that clearly contradicted international law would be enforced in Canada, such a statute would violate Canada's international obligations. As Professor Peter Hogg says of *The Covenant on Civil and Political Rights*, its terms "are relevant to the interpretation of *The Charter*, by virtue of the rule that a statute (and presumably a constitution) should be interpreted as far as possible into conformity with international law".[36] Whether or not the mentioned covenants are actually implemented in local legislation, a nation such as Canada which has become a party to them is under a duty to act in conformity with their provisions, and it is the principles of public international law and not domestic law which govern the interpretation of treaties.[37]

The recent *United Nations Draft Convention on the Rights of the Child*, article 14, contains similar provisions with respect to the freedom of thought, conscience, and religion of the child and of the rights and duties of parents "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."[38] This Convention is representative of the movement of international law towards recognizing the rights and autonomy of the child.

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[32] 12 Dominion Law Reports (2d) 796 (Quebec Court of Appeal) 807.

[33] United Nations General Assembly Official Records, 21st Session, 52 U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (in force for Canada, August 19, 1976).

[34] United Nations General Assembly Official Records, 21st session, 49 U.N. Doc. A /6316 (1966), 993 U.N.T.S. 3 (in force for Canada, August 19, 1976).

[35] See, for example, *Foreign Legations Case*, (1943) Supreme Court Reports 208; and *Saint John* v. *Fraser Brace Overseas Corp.* (1958) Supreme Court Reports 263.

[36] P. W. Hogg, *Constitutional Law of Canada*, 2nd edition (Toronto: 1985), p. 662.

[37] *Re Regina and Palacios* (1984), 45 Ontario Reports (2d) 269 (Ontario Court of Appeal).

[38] See Appendix 12.

Although this Convention is not yet in effect, having been put forward just about a year ago (1989), it carries with it the moral authority of the United Nations, and adds to the cumulative weight of the earlier declarations. Canada is also one of the signatories to the Convention.

In the United States the initial and still controlling precedent on the rights of parents to give their children a religious education outside of the public education system is *Pierce* v. *Society of Sisters*.[39] While American decisions are not, of course, binding in Canada, the Supreme Court of Canada has nonetheless found them to be helpful and persuasive in the case of analogous provisions in *The Canadian Charter of Rights and Freedoms* and the American constitution. So, for example, section 2(a) of *The Charter* is similar to the U.S. First Amendment, and section 7 of *The Charter* to the U.S. Fourteenth Amendment. Lacking Canadian precedents, the Supreme Court of Canada has drawn upon American precedents because the United States represents not simply the closest constitutional framework but also the closest social milieu to Canada.

11. Every person has the right to a formal education.

Like principle #10, this principle is also stated in many forms and in many places, such as *The International Covenant on Economic, Social, and Cultural Rights*, Article 13(1),[40] and *The United Nations Draft Convention on the Rights of the Child*, Article 28.[41]

The adjective "formal" refers to a structured program of learning. While the adjective does not appear in the typical enunciations of this right, it is implicit in such enunciations.

Closer to home, the principle is also stated in *The Saskatchewan Human Rights Code*:[42]

> 13(1) Every person and every class of persons shall enjoy the right of education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of his or their race, creed, religion, colour, sex, marital status, physical disability, nationality, ancestry or place of origin.

The principle is further stated in Saskatchewan's *Education Act*, subsection 144(1):

> Every person between the ages of six and 21 years shall have the right to attend school in the division in which he or his parents or guardian are resident, and to receive instruction appropriate to his age and level of educational achievement in courses of instruction approved by the board of education in the school or schools of the division.

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[39] 268 United States 510 (1924). See also John C. Hogan, *The Schools, the Courts and the Public Interest*, 2nd edition (Lexington, Mass: Lexington Books, 1985), p. 135.

[40] "The States Parties to the present Covenant recognize the right of everyone to education."

[41] See Appendix 12.

[42] Saskatchewan Statutes 1979, c. S-24.1.

In *Jones* v. *The Queen*, Mr. Justice La Forest cited approvingly the following passage from *Brown* v. *Board of Education of Topeka*, in support of this right:[43]

> [Education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

That Canada is a "free and democratic" society also affects the type of education to which every person has a right. In *Jones* v. *The Queen*, Madam Justice Wilson cited approvingly the following passage from *R.* v. *Oakes*,[44] which would have interpretive force in this respect:

> The court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.

12. The government has the authority to exempt children of compulsory school age from attendance at a public school.

Compulsory attendance laws originated in Ontario in 1871, and existed in most provinces and territories by the 1890s, both to ensure an educated workforce for the industrial age as well as to counteract child labour practices.[45]

Such laws represented an assumption of power by the state and a corresponding diminution of parents' rights. Before such laws were enacted, parents had the right not to give their children a formal education. After the enactment of such laws, parents no longer had this right.

Generally speaking, like Saskatchewan's present *Education Act*, sections 155 and 156(a), children of compulsory school were required to attend a public or separate school unless exempted from doing so by a local director or provincial superintendent of education.

Indeed, the constitutional validity of the assumption of such powers by the state was a central issue in *Jones* v. *The Queen*. Larry Jones, pastor of Western Baptist Church in Calgary, educated his three children and others in his church's school. He refused to apply either to the Department of Education for approval of his church school as a private school under clause 143(1)(e) of The Alberta *School Act*, or to a Department of Education inspector or superintendent for a certificate of efficient instruction under clause 143(1)(a). Since he believed that his right and duty to educate his children came from God, "requesting the state for permission to do what he is authorized by God to do would, he assert[ed], violate his religious convictions",[46] contrary to *The Charter*, section 2(a).

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[43] 347 United States 483 (1954) 493.

[44] (1986) 24 Canadian Criminal Cases (3d) 346. In this respect, see also *The United Nations Draft Convention on the Rights of the Child*, Article 29, in Appendix 12.

[45] See George S. Tomkins, *A Common Countenance: Stability and Change in the Canadian Curriculum* (Scarborough, Ontario: Prentice-Hall Canada Inc., 1986), pp. 49-50 and 111-112.

He further contended that *The School Act* deprived him of his right to educate his children as he saw fit in a manner that was not in accordance with the principles of fundamental justice, contrary to *The Charter*, section 7. In particular, the Act conferred on someone employed by the school system, i.e. someone with a vested interest in that system, the power to judge whether a person outside that system was providing efficient instruction; and the Act limited the evidence of efficient instruction to a certificate signed by an inspector or superintendent of schools, thus preventing him a full answer and defence to the charge.

With respect to *The Charter*, section 2(a), Mr. Justice La Forest, speaking for the majority, found that the "purpose" of the Alberta *School Act* did not violate Larry Jones' freedom of religion. The Act did not give the government absolute control over the education of children. It did "not provide for compulsory attendance at schools controlled by a board, but for compulsory education".[47] It recognized the right of parents to choose, say, a religiously-based education for their children provided that the government school authorities deemed the education to be efficient.

However, Mr. Justice La Forest did find that the "effect" of *The School Act* constituted some interference with Larry Jones' freedom of religion,[48] but that this interference was saved by section 1 of *The Charter*. Requiring those who sought exemption from the general scheme of education in the province to make application for this purpose was a reasonable limit on a parent's religious convictions concerning the upbringing of his/her children that was "demonstrably justified in a free and democratic society". "To permit anyone to ignore it on the basis of religious conviction would create an unwarranted burden on the operation of a legitimate legislative scheme to assure a reasonable standard of education."[49]

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[46] *Supra*, p. 588.

[47] *Ibid*, p. 591.

[48] Either an unconstitutional "purpose" or an unconstitutional "effect" can invalidate legislation. *Regina* v. *Big M Drug Mart*, (1985) 1 Supreme Court Reports 331. While Justice La Forest wrote the judgment on behalf of the majority, only three out of the seven justices actually concurred with Justice La Forest on this particular point. Four out of seven found that even the effect of the Alberta *School Act* did not violate Larry Jones' freedom of religion with respect to the education of his children; rather the Act accommodated freedom of religion.

[49] *Ibid*, p. 594.

Mr. Justice La Forest did not inquire how far the province could go in imposing conditions, such as the program of studies or the qualifications of the teachers in his school, if Larry Jones had applied for registration of his church school as a private school or for a certificate of instruction. However, he did say:

> Certainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant. In determining whether pupils are under "efficient instruction", it would be necessary to delicately and sensitively weigh the competing interests so as to respect, as much as possible, the religious convictions of the appellant as guaranteed by *The Charter*. Those who administer the province's educational requirements may not do so in a manner that unreasonably infringes on the right of parents to teach their children in accordance with their religious convictions. The interference must be demonstrably justified.[50]

With respect to *The Charter*, section 7, Mr. Justice La Forest found that Larry Jones had not been deprived of his liberty to educate his children as he saw fit contrary to the principles of fundamental justice. Notwithstanding that a school inspector or superintendent had a vested interest in the public education system, Larry Jones should not have presumed that they would necessarily be biased in certifying or failing to certify that instruction was efficient. Some pragmatism was necessary in the administration of *The School Act* with respect to compulsory attendance. The province had to be given room to make choices regarding the type of administrative structure that would suit its needs without always an appeal to the courts.

It was sufficient to protect the individual against the disregard of his rights or unfairness by the school authorities at the point of application. If it could be established that the school authorities had dealt with his application in an unfair or arbitrary manner, then the courts could intervene.

> I have no doubt that if in exercising their functions the school authorities sought to impose arbitrary standards, i.e. standards extraneous to the educational policy under the Act, or if they in other respects acted in a manner that was fundamentally unfair, such as failing to examine the facts or to fairly consider the appellant's representations, the courts could intervene. But I am unable to categorize the issue as the appellant does.[51]

In a strong dissent, Madam Justice Wilson found that Larry Jones had been deprived of his right to educate his children in accordance with his conscientious beliefs in a manner that was not in accordance with the principles of fundamental justice. Restricting proof of efficient instruction to the introduction of a certificate was an evidentiary limitation that did not give the appellant the opportunity adequately to state his case.

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[50] *Ibid*, p. 593.

[51] *Ibid*, p. 597.

Nor was this violation of section 7 saved by section 1 of *The Charter*. The onus of proof lay on the government seeking to uphold the limitation. In this case "the government has put forward no justification for the one exclusive means of establishing efficient instruction."[52]

In conclusion, the entire court concurred that compulsory attendance laws did not mean that every child had to attend a public (or separate) school. The laws mandated compulsory education, but not education in a compulsory way. Evidently, freedom of conscience and religion in education no longer includes, if it ever did, the freedom not to educate one's children.

Nonetheless, those who administer the province's education requirements have to weigh delicately and sensitively the competing interests of the state and the parents so as to respect, as much as possible, the religious convictions of the parents. They can not impose arbitrary standards or act in a manner that is fundamentally unfair, such as failing to examine the facts or fairly to consider the parents' representations in a particular case.

13. The relationship between the Department of Education and independent schools should recognize freedom of conscience and religion in education and should be associated with fundamental justice.

Freedom of conscience and religion is a "substantive" right, while "fundamental justice" is a procedural right. That the two are complementary is a fundamental principle of our constitutional heritage that goes back to the *Magna Carta* in 1215 and the British *Bill of Rights* in 1689. In order for rights to be significant there must be a procedure to give them practical operation.

In American jurisprudence, the term "due process" in the Fifth and Fourteenth Amendments has both procedural and substantive connotations. In *Den* v. *The Hoboken Land and Improvement Co.*,[53] Mr. Justice Curtis said that the words "due process of law" were meant to have the same meaning as "by law of the land", in *Magna Carta*. He said that the phrase was a restraint on all three branches of government. Congress could not make any process "due process". The concept was bound up with notions of equity and fair dealing.

In Canadian jurisprudence, section 7 of *The Charter* uses the term "fundamental justice" rather than "due process" when it asserts that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". The Canadian term "fundamental justice" is used in much the same sense as its American counterpart, "due process".

So, for example, referring back to the *Jones* case discussed in principle #12 above, both Mr. Justice La Forest, speaking for the majority, and Madam Justice Wilson, dissenting, considered both the religious freedom in section 2(a) and the liberty right in section 7 together for the purposes of determining Larry Jones situation under *The Charter*. The two go hand-in-hand, the first being substantive, and the second, procedural. As both Justices said, parents like Larry Jones are really asserting a "liberty" right under section 7 to educate their children in accordance with their religious convictions. Once a liberty right to educate one's children in an independent school is deduced from *The Charter*, conceded by public authority, and manifested in the operation of the school, the state cannot intrude arbitrarily into such an area except in accordance with the principles of "fundamental justice".

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[52] *Ibid*, p. 585.

[53] 15 Lawyers' Edition 372 (1856) (United States Supreme Court).

14. Provincial education policy should be consistent with the preservation and enhancement of the multicultural heritage of Canadians.

The phraseology comes from section 27 of *The Charter*, which now forms part of the interpretive framework within which all statutory enactments are to be developed, including provincial education law. A similar statement is also found in the preamble to the Alberta *School Act*:

> Whereas the education community in making decisions should consider the diverse nature and heritage of society in Alberta within the context of its common values and beliefs. . .

Many commentators have described the most significant innovations in *The Charter* to be the promotion of bilingualism and multiculturalism. For instance, Section 23 of *The Charter* makes explicit provision for the establishment of official minority language schools "where numbers warrant". In the recent case of *Mahe* v. *A.-G. Alberta*,[54] the Supreme Court of Canada held that "where numbers warrant", francophone minorities in English Canada were entitled to their own school boards. Provinces must now make provision for the establishment of such boards as public authorities.

With specific reference to section 27, Mr. Justice Tarnopolsky has stated that language and religion are the two major manifestations of culture.[55] While section 27 would not appear to mandate the establishment of religiously-based schools as public authorities, as section 23 does for official minority language schools, it does support the existence of religiously-based schools as independent schools.

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[54] (1990) 68 Dominion Law Reports (4th) 69 (Supreme Court of Canada).

[55] See Walter S. Tarnopolsky, "The Equality Rights, (Ss. 15, 27 and 28)", in Tarnopolsky and Beaudoin (eds.), *Canadian Charter of Rights and Freedoms: Commentary* (Toronto: Carswell, 1982), where Professor Tarnopolsky (as he then was) discusses the relationship of multiculturalism as set out in section 27 of *The Charter* to, *inter alia*, religion, pp. 437-442.

15. Independent schools are not public authorities.

In contrast with public boards of education, the truly distinguishing feature of independent schools is that they are "not public authorities". Clause 2(s.1) of Saskatchewan's *Education Act* specifically defines an "independent school" as an institution:

> (i) in which instruction is provided to pupils of compulsory age; and
> (ii) which is controlled and administered by a person that is not a public authority.

Independent schools are generally established as non-profit corporations and as such have legal powers analogous to those of natural persons.[56] They would, of course, be subject to any limitations imposed on them by the Act pursuant to which they were incorporated, but outside of such limitations they would possess the same powers as individuals possess such as the right to enter into contracts or to borrow money.

As Larry Anderson explained in his memorandum to Michael Littlewood,[57] the powers of an independent school are limited or restricted in three general ways:

- "In the first instance, by laws that restrict the rights of individuals or corporations." For example, independent schools or employees of independent schools are not permitted, any more than any person in Canada, to commit fraud, slander, libel, or physical abuse of children.

- "In the second instance, by the Act under which it is incorporated, its incorporating documents, its by-laws, or any agreement binding on its members, which might impose any type of limitation or control on its activities or powers." These may be referred to as self-imposed restrictions.

- "In the third instance, by explicit provisions in legislation relating to activities it is undertaking. Typically, such provisions arise at the point where the activities of persons come into contact with matters of public concern. In the case of independent schools, these would include applicable provisions of *The Education Act*, examples of which would be recognition of the school for purposes of compulsory attendance, exemption from municipal property taxes, recognition of the school's educational program for purposes of Division IV credits, and public funding."

From a strictly legal point of view, the status of independent schools as "legal persons" means that most of *The Education Act* does not presently apply to independent schools, for *The Education Act* speaks mainly of (public) schools, which definition specifically excludes independent schools.[58] In drafting regulations for independent schools, with the exception of the historical high schools, the Minister is in effect starting from a clean slate. So, therefore, is the Board in making recommendations to the Minister. For example, sections 164 to 168, which prescribe the days and hours of operation of public schools, do not automatically apply to independent schools unless regulations specify such.

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[56] Cf. Lord Haldane in *Bonanza Creek Gold Mining Co.* v. *R.*, (1916) 1 Appeal Cases 566. See also Saskatchewan's *Non-Profit Corporations Act*, subsection 15(1).

[57] (January 29, 1990). See Appendix 13. Larry Anderson is a Crown Solicitor in the Civil Law Division of the Department of Justice. Michael Littlewood is the Director of Board and Teacher Services in the Department of Education.

The different legal status of independent schools -- that they possess the same powers as individuals subject to the three types of restrictions above -- explains the character of independent school legislation and regulations in other Canadian provinces as well as in Saskatchewan. In other provinces, it has led more or less inexorably to the establishment of different categories of independent schools, whether explicit or implicit, depending on which criteria a particular school meets, at one extreme, for purposes of compulsory attendance, and at the other extreme, for public funding. Among other reasons, the different legal status of independent schools also led our Advisory Board to recommend different categories for independent schools in Saskatchewan.

16. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.

The phraseology comes from *Regina* v. *Big M Drug Mart*,[59] the first "freedom of conscience and religion" case under *The Charter.*

> What unites enunciated freedoms in The American First Amendment, s. 2(a) of *The Charter* and in the provision of other human rights documents in which they are associated is the notion of the centrality of individual conscience and the inappropriateness of government intervention to compel or to constrain its manifestation.
>
> It should be noted, however, that an emphasis on freedom of conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity to a free and democratic political system that American jurisprudence has emphasized the primary or "firstness" of The First Amendment. It is this same centrality that in my view underlies their designation in *The Canadian Charter of Right and Freedoms* as "fundamental". They are the *sine qua non* of the political tradition underlying *The Charter.*

Indeed, Western political philosophers place freedom of conscience at or near the top of the distinctive features of Western Civilization and trace the concept to both Greek and Judeo-

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[58] *The Education Act*, clause 2(ff). See page 157 below.

[59] *Supra*, p. 105.

Christian roots. The Greek element consisted in the development of the mind in the quest for truth, and the Judeo-Christian element emphasized the importance of moral obligation to God as found in conscience. It is often said that these twin pillars of the Hebraic-Christian and Hellenistic heritage are among the main supports of Western culture.

With respect to education, the principle would apply, among other things, to the election of boards of education, both public and independent. Electors and parents, in deciding who is to represent their interests in the education of children, are presumed to cast their ballots in a "free and informed" manner.

The principle would also apply to parental decisions to enrol their children in an independent school, particularly when the parents pay tuition fees in support of this decision. Our democratic system assumes that this is a free and informed choice unless demonstrated otherwise. Even where the views on religion or the values of children diverge from those of the parents, the courts have generally allowed the parents, within limits, to impose their views on their children.

17. In the case of an alleged failure of parents or guardians to provide adequate education for their children, the burden of proof resides with the government.

The principle is a general one, arising from the previous principle. The phraseology comes from the Ontario case, *Lambton County Board of Education* v. *Beauchamp*.[60] Because of her sincere religious convictions, Mrs. Beauchamp had removed her child from the public education system and was supervising her at home in a correspondence course offered by the Christian Liberty Academy. The court held:

> Those seeking to invoke the compulsive powers of the state in the face of the alleged failure of the parent or guardian to provide an adequate alternative, and thereby to impose the sanctions of a quasi-criminal legislation, have a substantial burden of proof.
>
> In this case the evidence tendered on behalf of the Lambton County Board of Education falls short of establishing beyond a reasonable doubt that Mireille Beauchamp is guilty of the offence charged.

The corollary of this principle is that independent schools must have open doors. The state must have open access at all reasonable times to all independent schools, not only upon invitation, in order to observe any aspect of the educational program in any independent school in order to collect evidence, as necessary, to substantiate a concern that a particular school is not providing an education comparable in quality to that of the public schools. Such "inspection" is broader in scope than the historical concept of school inspection in Saskatchewan's public schools, which involved checking off minimum criteria on a checklist and which no longer reflects in an operational way the work of directors and superintendents of education in Saskatchewan. Such "inspection" would also be concerned with the intellectual as well as the physical well-being of children in independent schools.

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[60] (1979) 10 Reports of Family Law (2d) 354 (Ontario Prov. Ct.), p. 362.

18. Independent schools have the right to restrict access to members of their own group.

The Saskatchewan Human Rights Code,[61] in section 13, assigns an important place to the education of religious minorities:

> 13(2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or physical disability, where it enrols persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled.

It is noteworthy that subsection 13(2) expressly permits schools to follow a "restrictive policy" respecting enrolment when they are "conducted by a religious order or society". This pioneer provincial enumeration of human rights in Canada accordingly contained a seminal provision enshrining a right to education for those who dissented from mainstream educational or religious systems on grounds of belief.

Roman Catholic separate schools also enjoy this same right to restrict enrolment to Roman Catholics. For non-Catholics, enrolment in a separate school is a privilege, not a right.

19. Independent schools have the right to restrict the employment of teachers to individuals who share the faith and practice of the organization that owns or operates the independent school.

The Supreme Court of Canada affirmed this principle in an important 1984 decision, *Caldwell et al.* v. *Stuart et al.*[62] At issue was a conflict between two legally established rights: (1) that of a religious group to operate an independent school according to its religious beliefs and practices; and (2) that of the individual to freedom from discrimination in employment with respect to religious beliefs and practices. In this particular case, an independent Roman Catholic school in Vancouver had dismissed a Roman Catholic teacher who had violated the canon law of the church by marrying a divorced person in a civil ceremony.

The court resolved this conflict in favour of the independent Roman Catholic school. It held that "a reasonable cause for dismissal" was a concept different from a "*bona fide* qualification for employment". Examples of "reasonable cause" included dishonesty, unexplained absenteeism, drunkeness, and incompetence. In some cases, the same conduct or characteristic of an employee might constitute both "reasonable cause" and lacking a "*bona fide* qualification". But even though the concepts might overlap, they should not be confused. The most highly qualified person might yet give his employer reasonable cause to dismiss him. In the particular case at bar, the school in question had no justification for dismissing Margaret Caldwell for "reasonable cause", since her conduct and competence as a teacher of mathematics and commercial subjects was acknowledged by all. However, the school was justified in dismissing her for lacking a "*bona fide* qualification".

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[61] Saskatchewan Statutes 1979, c. S-24.1.

[62] *Supra*, p. 603.

> The right of equality of opportunity, free from discrimination, which is protected by section 8 [of *The British Columbia Human Rights Code*] is characterized as a right based on a *bona fide* qualification in respect of that employment. . . . Ordinarily, a person who is academically qualified and duly licensed by the proper authority, would certainly possess the *bona fide* qualifications for employment as a teacher in a public school. . . . This result may not always follow and particularly in cases relating to denominational schools. As has been pointed out, the Catholic school is different from the public school. In addition to the ordinary academic program, a religious element which determines the true nature and character of the institution is present in the Catholic school. To carry out the purposes of the school, full effect must be given to this aspect of its nature and teachers are required to observe and comply with the religious standards and to be examples in the manner of their behaviour in the school so that students see in practice the application of the principles of the Church on a daily basis and thereby receive what is called a Catholic education. Fulfilment of these purposes requires that Catholics observe the Church's rules regarding marriage. It must be celebrated in the Church and the marriage of divorced persons is not recognized.

Roman Catholic separate schools also enjoy this same right to restrict the employment of teachers to individuals sharing the Roman Catholic faith and practice.

Operational Framework

20. As far as possible, the Board will work on a consensus basis.

The Board agreed to this operational principle at its first meeting on October 10, 1989. Furthermore, the Board agreed that:

> Where consensus is not achievable, voting will be by majority vote. However, a large majority of Board members present at each meeting must agree on each recommendation to the Minister. Any dissent should receive extensive attention in order to minimize the extent of dissent at the end of the process. Where the Board cannot agree on a recommendation with respect to a particular issue, then several options for dealing with this issue should be presented to the Minister, along with the views and reasonings behind the several options.

Indeed, the two key elements of any Advisory Board process are, first, the appropriate assembly of persons representing all relevant interest groups, in our particular case by the Minister of Education, and second, consensus-making by the representatives so assembled. Consensus is the result of interactive discussions, among equals, of all elements of the issues raised, each group providing input from their own particular perspective. Consensus is the *raison d'etre* of an Advisory Board process. The resulting conclusions represent not only a compromise from positions that organizations previously held but also a compromise based on more information than organizations previously possessed at the beginning of the process.

Consensus-making pervades the Board's recommendations, but one of the best examples of consensus-making can be found in the Board's answer to question (A.1): "Will all teachers in independent schools be required to hold a valid Saskatchewan teacher's certificate?" The Board's teacher education, certification, and standards committee met seven times between February 6 and April 24 to discuss this issue. The committee presented an initial consensus to the Board on March 15. But, since the overall Board could not agree to the committee's initial proposal, the committee met several more times before coming up with a proposal to which the overall Board could and did agree on April 25. At the beginning of the process, no one could have predicted what the outcome would be. So far as we are aware, the Board's answer to this question is unique in Canada.

21. **The Board will not be concerned if any of its recommendations require an amendment to provincial legislation. The Department of Justice will ultimately be responsible for determining which items must be in statute, which can go in regulation, and which can be handled simply as policy statements.**

The provincial legislature passed amendments to *The Education Act* in August 1989 in respect of independent schools, which the Minister of Education characterized as enabling amendments. Given these amendments, the Minister's basic intention was to implement the Board's recommendations in regulation, which was consistent with existing Saskatchewan practice, particularly since the last consolidation of *The Education Act* in 1978.

However, at the Board's first meeting on October 10, 1989, some members raised the question whether the Board was strictly bound by these amendments. What if some recommendations required further amendments to *The Education Act*? In his letter of November 27, 1989, the Minister replied that he was willing to make additional amendments to the legislation if necessary. Hence, while generally expecting that its recommendations would be implemented in regulation, the Board adopted as an operational principle not to be concerned if some of its recommendations would require changes in legislation.

22. **As far as possible, the Board will recommend regulations, policies, and procedures governing the operation of independent schools that are consistent with and conform to existing Saskatchewan educational practices and traditions.**

Historically speaking, the original Alberta and Saskatchewan educational legislation was modeled after Ontario legislation. In the nature of things, however, notwithstanding certain national trends, the three provinces have diverged somewhat in terms of their educational policies, practices, and traditions. Some examples of practices and traditions that are fairly, if not totally, unique to Saskatchewan education are the following:

- The collaborative process of developing educational policy, going back to the 1940s and 1950s, and now involving the Department of Education, the SSTA, the STF, LEADS, the Colleges of Education;

- Accreditation of Grade 12 teachers by teacher and by subject.

- Capital grants to accredited independent high schools;

As was pointed out above, from a strictly legal point of view, with the exception of the historical high schools, the Minister of Education is drafting regulations for Saskatchewan's independent schools from a clean slate. Most sections of *The Education Act* do not apply to independent schools unless the Minister makes them apply.

Notwithstanding this legal perspective, the Board viewed Saskatchewan's independent schools as now part of the province's collaborative policy-making process, at least insofar as provincial policies affect independent schools, and decided to make recommendations which, as far as possible were consistent with Saskatchewan's educational practices and traditions.

While this principle pervades both the Board's discussions of issues and the Board's recommendations in Chapters VI to IX, a good example of this principle can be found in the Board's answer to question (A.2): "What accommodations, if any, need to be made to existing criteria and processes respecting teacher certification in Saskatchewan to make them responsive to the needs of independent schools?" While British Columbia has established an independent school teacher certificate committee parallel to its College of Teachers, our teacher committee did not for the moment entertain establishing something similar in Saskatchewan. Rather, our committee's proposals and our Board's recommendations represent small modifications to existing criteria and processes surrounding Saskatchewan's Board of Teacher Education and Certification.

23. While the Board has examined legislation and regulations pertaining to independent schools in other provinces insofar as these reflect a common constitutional and legal framework in Canada, the Board's recommendations will represent a made-in-Saskatchewan regime for the operation of independent schools in Saskatchewan.

The growth of independent schools in the 1970s and 1980s was a nation-wide phenomenon. For all of Canada, between 1963 and 1971, independent school enrolment declined by about 30 percent, while public school enrolment increased by about 15 percent. However, between 1971 and 1985, independent school enrolment increased by about 67 percent, while public school enrolment declined by about 15 percent.[63]

As a result of these trends, a number of provinces have conducted studies on independent schools[64] and many have amended or are in the process of amending their provincial legislation with respect to independent schools. For example, Alberta passed a new *School Act* in 1988, which contained significant changes for independent schools, and British Columbia passed a new *Independent School Act* in 1989, alongside its new *School Act*.

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[63] The increase in independent school enrolment between 1971 and 1985 was not, however, the major cause of the decline in public school enrolment, since even by 1987, only 4.6 percent of Canadian elementary and secondary students were enroled in independent schools. Larger demographic trends, such as the post-war "baby boom", account for the declining enrolment in public schools.

[64] Two of the best known are Woods Gordon Management Consultants (1984), *A study of private schools in Alberta*, and Bernard J. Shapiro (1985), *The Report of the Commission on Private Schools in Ontario*.

At its first meeting, the Board commissioned its Secretariat to conduct research on legislation and regulations pertaining to independent schools in other provinces, which report the Secretariat presented to the Board on January 9, 1990.

However, the Board has examined the legislation and regulation in other provinces primarily for the extent to which these reflect the emerging constitutional and legal framework common to the operation of all independent schools throughout Canada. In line with principle #22, a number of the Board's recommendations are unique in the Canadian context, either because they reflect Saskatchewan's educational traditions, or because they represent a new departure from existing practices in other provinces.

24. The Board recognizes the unique position of the historical high schools in the Saskatchewan education scene. Its recommendations will not alter or diminish the existing relationships that these schools have already developed with other partners in Saskatchewan education.

The eight member schools of the Saskatchewan Association of Private High Schools comprise schools that have been part of the Saskatchewan Education scene for most of the 20th century. These schools were originally founded by educational pioneers of various religious convictions, who desired schools providing a high quality education with an added spiritual dimension. Often, these were the first high schools in their respective parts of the province, what Robert Stamp refers to as "schools of necessity".[65]

In his *Review of Private Schooling in Saskatchewan*, Gordon Dirks referred to these schools as

> permanent education fixtures in Saskatchewan. Their traditions and place in the education practice of this province are deeply rooted. They are well-respected within education circles and [being residential schools] it is not uncommon for some of these schools to attract significant numbers of out-of-province students to their campuses.[66]

These schools have developed long-standing relationships with the other major partners in Saskatchewan education, including the Department of Education and local school divisions. They have long conformed to provincial curriculum policy and their teachers are certified by the Department of Education. They receive both operating and capital grants from the Department of Education under *The Education Regulations*, sections 71 and 72. Their pupils are eligible to receive secondary level credits under *The Education Regulations*, section 29. Their teachers are members of the Saskatchewan Teachers' Federation and participate in the Teachers'

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[65] Robert Stamp, "A History of Private Schools in Ontario", in Bernard J. Shapiro, *The Report of the Commission on Private Schools in Ontario* (October 1985), pp. 193-207.

[66] Gordon Dirks, *op.cit.*, p. 22.

Superannuation Plan. Some of their boards are members of the Saskatchewan School Trustees Association.

In a submission to the Board at its seventh meeting on April 25, 1990, the two representatives of the Saskatchewan Association of Private High Schools expressed their concerns that new regulations developed to encompass all independent schools might adversely affect these historical relationships. The Board concurred that its recommendations should not alter or diminish the existing relationships that the historical high schools have developed with the other partners in Saskatchewan education. This principle is reflected, among other things, in the recommendation for a distinct category of independent schools called the "historical high schools".

25. The Board recognizes that most, although not all independent schools, are religiously-based. In establishing a legal framework for independent schools in Saskatchewan, the Government is not interested in regulating religious institutions as such, but in regulating education.

All but three independent schools presently operating in Saskatchewan are religiously-based. Some are denominationally-based, such as most of the historical high schools and the Seventh-day Adventist schools; some are church-based such as the members of the Saskatchewan Association of Independent Church Schools and the Church of God in Christ (Mennonite) Schools; and still others are society schools, such as Heritage Christian School in North Battleford, Regina Christian School, and Saskatoon Christian School. That is, these latter schools are operated by a society of parents established for the explicit purpose of operating a school and with an explicit inter-denominational focus.

In these cases, the principles associated with the separation of church and state may apply. While this principle had its origins with the early church, in the post-Reformation period, the principle has been attributed to Martin Luther and to his doctrine of the two kingdoms (temporal authority and the Kingdom of God), but above all to John Locke and his *Letter Concerning Toleration*, published in 1689, the same year as the British *Bill of Rights*.

Professor McConnell discussed the separation of church and state, its legal application in Canada, and its relevance to independent schools in Saskatchewan in both his written submissions.

John Locke wrote his *Letter* specifically in support of the non-conformists' resistance to Anglican uniformity in Restoration England. While the uniformists argued that nonconformists such as John Bunyan could believe what they wanted to believe so long as they did not practise their beliefs openly, Locke argued that religious belief could not be so separated from religious practice. To enforce conformity of practice was to turn people into hypocrites and into enemies, and to cause unnecessary human suffering. People did not readily change their beliefs, even on the point of death, because hypocrisy was a sin that was destructive of one's supreme interest, namely, eternal salvation.

According to Locke, the state and the church had different spheres of concern, that of the state, the purely secular, and that of the church, the sacred. The state was properly concerned with the promotion of material goods, the church with the promotion of spiritual goods. In particular, the promotion of "true religion" was not a concern of the state, since, in any event, there was no known criteria for determining which was the true religion.

Within their respective spheres of concern, however, while the power of the state was ultimately coercive, that of the church was purely persuasive. By a church, Locke did not mean a national church, but rather a local assembly -- a body of believers united by a common faith and practice. Explicitly, Locke defined a church as:

> a voluntary Society of Men, joining themselves together of their own accord, in order to the public worshipping of God, in such a manner as they judge acceptable to him and effectual to the Salvation of their Souls.[67]

To Locke, an established national church was among the greatest threats to peace.

Admittedly, this distinction between the secular and the sacred, was not always clear-cut. While the coercive power of the state should not generally enter to the arena of conscience, there always existed borderline cases. Locke himself distinguished "speculative opinions", such as the Roman Catholic belief in transubstantiation, which did no injury to one's neighbour, from "practical opinions", which might be seditious, because the individual might be a servant of a foreign power. Where a church's activities began to impact upon the realm of the material, then the state might have a legitimate claim against the activities of a particular church. But in all such instances, he argued, the burden of proof rested properly with the state, and the only good grounds were when public security or the rights of other individuals were being threatened.[68]

In cases where the coercive power of the state did, inadvertently or otherwise, enter into the arena of conscience, individuals were to resist passively, not violently. They were not obligated to obey a law prescribing what they sincerely believed to be a sin, but they were obligated to suffer the punishment, until by the force of their example, they persuaded the state to change the law. Thus religious toleration did not lead to civil war, as the uniformists had argued, but rather to peace. It was the state's enforcement of uniform religious practice that led to civil war, such as the British civil war of 1642 to 1652.

Having stood the test of time, Locke's *Letter* is regarded as the intellectual foundation for the international rights movement from then until the present day. While Locke's ideas were first expounded with respect to freedom of conscience and religion, they have since been extended to moral and political beliefs. As such, his ideas are now an integral part of the normative culture of Western democracies, and in particular, form the foundation for the American *Bill of Rights*, *The Universal Declaration on Human Rights*, and *The Canadian Charter of Rights and Freedoms*.

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[67] John Locke, *A Letter Concerning Toleration* (Indianapolis: Hackett Publishing Company, 1983[1689]), p. 28.

[68] For Locke, the rights of children, before they reached the age of maturity, did not come into play. That is, Locke, like other philosophers of his day, did not accept the concept of the autonomous child. Beyond the age of maturity, however, an adult was free to choose his own faith and practice, irrespective of what his parents believed or practised. Today, as has already been mentioned above, international law is moving towards recognizing the rights and autonomy of children, and in Canada, the autonomous well-being of the child is now an accepted principle in certain areas of family law, such as divorce, where the well-being of the child is held to be paramount over the interests of the parents. See Appendix 11.

According to Professor McConnell, the Independent Schools Advisory Board had to recognize that

> independent schools were to some extent the non-conformists of today. It was no accident that most independent schools were religiously-based. The churches, denominations, and religious societies that are operating independent schools in Saskatchewan are simply performing one of the historic roles of the church in Western society, that of dissent from prevailing societal trends, such as the secularistic trend in public education.
>
> While the state is legitimately concerned with minimum educational standards, uniform requirements in respect of, say, curriculum or the qualifications of teachers, by requiring teachers to be state-certified according to provincial regulatory norms, would likely be held unnecessarily intrusive into the affairs of religiously-based schools, and a violation of the principle of the separation of church and state.

Indeed, in *Regina* v. *Wiebe*[69], an Alberta court held that the particular regulatory requirement that approved private schools should employ certified teachers was an unnecessary intrusion of the state into the freedom of religion of the defendant. The *Wiebe* case, while not technically binding, would be persuasive here in Saskatchewan, since the "freedom of religion" is the same and the statutory basis of the educational systems is similar in the two provinces. Freedom of religion is essentially inseverable.[70]

This does not mean that anyone can claim exemption from state regulations, for example, with respect to the state-certification of teachers, by standing behind the separation of church and state. In Canadian jurisprudence, the operative principle with respect to freedom of conscience and religion and the separation of church and state is "sincerity of belief". In American jurisprudence, it is "conviction" as opposed to mere "preference". A sincere belief or conviction is something one would endure severe legal sanctions in order to uphold. A preference, on the other hand, is something like a suit of clothes, which may reflect transient fashion. In *Wiebe*, the court referred particularly to the sincerity of Mennonite convictions in declaring the Alberta *School Act* of that day inconsistent with the Alberta *Bill of Rights*.

In *Jones* also, Mr. Justice La Forest referred to the sincerity of Larry Jones' religious convictions:

> A court is in no position to question the *validity* of a religious belief, notwithstanding that few share that belief. But a court is not precluded from examining into the

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[69] (1978) 3 Western Weekly Reports 36 (Alberta Prov. Ct.).

[70] R. M. Beaton and Jim Russell (Gauley and Co.) present an alternative view that the *Wiebe* decision dealt with an extraordinary situation peculiar to the province of Alberta and would not be persuasive in other provinces such as Saskatchewan. See Appendix 11.

> sincerity of a religious belief when a person claims exemption from the operation of a valid law on that basis.[71]

According to Professor McConnell, the *Beauchamp*, *Wiebe*, and *Jones* cases

> are no more than contemporary illustrations of the enduring value of John Locke's principles of broadmindedness and forbearance as set out in his *Letter Concerning Toleration* discussed above. These are the elements needed to ensure the cohesiveness of our pluralistic society. Where respect for such minority religious opinion is absent, the state assumes an intrusive role in the realm of conscience and religion which violates the first principles of both Western political philosophy and the law of *The Charter.*

This is not to say, of course, that the state does not have an important role to play in the "inspection" of religiously-based independent schools, in the broad sense discussed under principle #17 above, to observe any aspect of the educational program in any independent school in order to protect the interests of the public at large with respect to the education of the children in the independent school. Although there may be some administrative inconvenience in conferring such an "inspectorial" role on the provincial educational authorities, it is part of the price we must pay for living in a more humane and tolerant society.

26. The Board will attempt to make recommendations applicable not only to the existing independent schools but also to those that may be established hereafter.

The Minister has clearly established the Independent Schools Advisory Board at a very unique time in Saskatchewan educational history. Not only have the number of independent schools in Saskatchewan increased significantly in the last decade, as part of a nation-wide phenomenon, but also

- The Department of Education is in the midst of implementing a major curriculum reform, namely Core Curriculum, in the province's public and separate schools;

- The Department of Education is in the process of establishing a fransaskois component to the Saskatchewan school system; and, particularly,

- *The Charter of Rights and Freedoms*, 1982, and judicial interpretations of *The Charter* are impacting all educational law.

In contrast with previous "statutory" human rights provisions, such as *The Canadian Bill of Rights*, 1960, *The Charter* is having much greater vitality. As Professor McConnell explains, *The Charter's* entrenched human rights norms comprise

> a universal, "higher law" standard, analogous to natural law, which purports to apply to

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[71] *Supra*, p. 591.

> all lesser legislation. The antecedent doctrine of the supremacy of Parliament reflects more the Hobbesian tenet that in the making of legislation the Canadian sovereign (at least within its defined "division of powers") is essentially unconfined. This was the constitutional position before 1982. With the adoption of *The Charter* however, the Canadian constitution resembles more the philosophical position of John Locke, just discussed, which emphasizes that there can be no derogation by lesser laws from certain higher law values. In the Lockean tradition, society is seen as larger than the state, and individual rights are never completely engulfed by state powers.

Without question, the Minister is justified in establishing this Advisory Board at this time. However, the Minister should not be expected to establish a similar Board whenever a new independent school is started. Therefore, while the Board cannot humanly conceive of every possible contingency, the Board is attempting to make recommendations that will be applicable not only to the existing independent schools, but also to those that do not yet exist.

27. The Board will attempt to facilitate the effective operation of independent schools. Its recommendations will not be intended to have a negative impact on the ability of legitimate independent schools to operate.

The phraseology comes from the Minister's letter of November 27, 1989, clarifying the mandate of the Board, with which the Board concurred. The purpose of establishing the Independent Schools Advisory Board is not to eliminate any existing independent schools but to give them a formal legal status, and where necessary, to assist them with improving the quality of their instruction.

This principle was very important to newly established independent schools. In the words of the Church of God in Christ (Mennonite) representative on the Board:

> We agree that all our children should have the benefit of a quality education. My own children have not had the same opportunity and privilege that I had in this regard. Our children were caught in the vortex of the tension through the transition from public schools to an independent school. Their last year in the public school was difficult and the transition to an independent school was also an adjustment.
>
> We started our school twelve years ago with lack of expertise and experience. After all these years of operation, we are now in a very different position. We have teachers with 10 or 12 years of experience; our teachers have a training program and they attend in-service sessions to improve their knowledge and teaching skills. We now are using continent wide church conference knowledge and expertise.
>
> After much effort in getting our schools started, what does the future hold for us? I would like to quote from the letter Mr. Meiklejohn wrote to Alec. "It would clearly be unhelpful if the Board were to make recommendations which would serve to have a significant negative impact on their ability to operate."[72]

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[72] Submission to the Minister's Advisory Board on Independent Schools (February 7, 1990).

This principle is reflected in many of the Board's recommendations, but in particular in the Board's answers to questions (A.1), (A.2), (A.3), (B.2), (B.3), and (B.4), which questions concern the qualifications of teachers and the programs of studies in independent schools.

28. The Board will attempt to promote a harmonious relationship between independent schools and other partners in Saskatchewan education.

This phraseology also comes from the Minister's letter of November 27, 1989, clarifying the mandate of the Board.

Time and time again, the independent school representatives to the Board clearly stated that they did not see their schools in competition with the public schools, but as complementary to the public schools, providing their pupils an education with a particular spiritual perspective or emphasis, which the public schools could no longer provide.

In the words of one of the two SAICS representatives on the Board:

> SAICS members chose to establish their own schools as the less socially divisive and Scriptural solution. By their own admission, public schools cannot fill the spiritual vacuum needed by our parents and children in education. The role SAICS has, then, is to provide a viable alternative to parents who hold to a Christian philosophy and want Christian education for their children. We are not intolerant of other faiths. We ask that others not be intolerant of us. Canadian society is a mosaic. We accept diversity or we would not already have an existing separate school system. This diversity enriches our society and creates social harmony. Therefore, we see SAICS schools as complementary to the role of the public schools in education.
>
> We agree that education is a public good with benefits to both the individual and society. Education is an investment in the future. Church schools accept the role of the state to protect the rights of Canadian children in education. We agree with compulsory education, but not education in a compulsory way. The government must provide a legal framework in which schools can operate and lay down education standards. There are many ways to achieve these roles. The government has chosen public schools in North America. We have no problem with this as long as they are not a monopoly as this is inconsistent with Western democratic society.[73]

The Board concurred with the Minister in desiring independent schools to become an integral part of the Saskatchewan education scene. This principle is also reflected in a number of the Board's recommendations, but in particular in the Board's answers to questions (A.5), (B.9), (C.5), and (C.6).

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[73] Submission to the Minister's Advisory Board on Independent Schools (December 12, 1989). See Appendix 18.

29. The Board will direct its recommendations primarily to the Minister of Education. It acknowledges that recommendations to other partners in Saskatchewan education will carry less weight.

At its first meeting on October 10, 1989, the Board agreed that its major task was "to make recommendations to the Minister of Education concerning regulations, policies, and procedures governing the operation of independent schools in Saskatchewan." The Minster had established the Advisory Board for the explicit purpose of receiving advice from the major partners in Saskatchewan education with respect to an appropriate legal framework for independent schools in Saskatchewan.

On the other hand, precisely because the organizations represented on the Board are "partners" in Saskatchewan education, recommendations to these partners arose naturally out of the Board's discussions. However, the Board recognized that each of these organizations were autonomous organizations that had their own membership structure and their own decision-making processes. Such recommendations were more in the nature of undertakings by the organizations represented on the Board to facilitate the implementation of the overall package of recommendations. They could not carry the same weight as recommendations to the Minister, and they should also reflect appropriate protocol.

Table 3.1

Guiding Principles: Summary

Policy Framework

1. The Government of Saskatchewan has a compelling interest in the education of all Saskatchewan children, of which the primary vehicle is the public education system in its two dimensions, the public schools and the separate schools.

2. From either an historical, legal, or practical perspective, independent schools have the right to exist in Saskatchewan.

3. The Government has the interest and the responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan.

4. In order to operate legitimately in Saskatchewan, independent schools will be required only to be registered and not licensed.

5. The costs of operating independent schools will continue to rest with parents who choose this form of education for their children. There will be no new operating grants for independent schools beyond those currently provided to the historical high schools.

6. By their very nature, independent schools are similar to public schools in some respects and different in others. Parents enrol their children in independent schools in order to achieve objectives which may not or can not be satisfied within the public education system.

7. Independent schools must provide a quality of education comparable to that of public schools.

8. Independent schools must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development.

9. Independent schools must not promote values which conflict with the rights, freedoms, and moral principles upon which our society is based.

Constitutional and Legal Framework

10. Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, parents have the right and the responsibility to provide for the education of their children in accordance with their religious convictions.

11. Every person has the right to a formal education.

12. The government has the authority to exempt children of compulsory school age from attendance at a public school.

13. The relationship between the Department of Education and independent schools should recognize freedom of conscience and religion in education and should be associated with fundamental justice.

14. Provincial education policy should be consistent with the preservation and enhancement of the multicultural heritage of Canadians.

15. Independent schools are not public authorities.

16. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.

17. In the case of an alleged failure of parents or guardians to provide adequate education for their children, the burden of proof resides with the government.

18. Independent schools have the right to restrict access to members of their own group.

19. Independent schools have the right to restrict the employment of teachers to individuals who share the faith and practice of the organization that owns or operates the independent school.

Operational Framework

20. As far as possible, the Board will work on a consensus basis.

21. The Board will not be concerned if any of its recommendations require an amendment to provincial legislation. The Department of Justice will ultimately be responsible for determining which items must be in statute, which can go in regulation, and which can be handled simply as policy statements.

22. As far as possible, the Board will recommend regulations, policies, and procedures governing the operation of independent schools that are consistent with and conform to existing Saskatchewan educational practices and traditions.

23. While the Board has examined legislation and regulations pertaining to independent schools in other provinces insofar as these reflect a common constitutional and legal framework in Canada, the Board's recommendations will represent a made-in-Saskatchewan regime for the operation of independent schools in Saskatchewan.

24. The Board recognizes the unique position of the historical high schools in the Saskatchewan education scene. Its recommendations will not alter or diminish the existing relationships that these schools have already developed with other partners in Saskatchewan education.

25. The Board recognizes that most, although not all independent schools are religiously-based. In establishing a legal framework for independent schools in Saskatchewan, the Government is not interested in regulating religious institutions as such, but in regulating education.

26. The Board will attempt to make recommendations applicable not only to the existing independent schools but also to those that may be established hereafter.

27. The Board will attempt to facilitate the effective operation of independent schools. Its recommendations will not be intended to have a negative impact on the ability of legitimate independent schools to operate.

28. The Board will attempt to promote a harmonious relationship between independent schools and other partners in Saskatchewan education.

29. The Board will direct its recommendations primarily to the Minister of Education. It acknowledges that recommendations to other partners in Saskatchewan education will carry less weight.

IV. Classification of Independent Schools in Saskatchewan

The Minister's Advisory Board on Independent Schools is making one recommendation that is foundational to and pervades virtually all other recommendations. Accordingly, the purpose of the present chapter is to discuss this recommendation in full, namely:

> *That the Minister of Education establish four categories of independent schools in Saskatchewan called registered independent schools, accredited independent schools, historical high schools, and alternative independent schools.*

Essentially, the Minister's Advisory Board reached this conclusion because there was no other way to reconcile all the 29 principles in the previous chapter. On the other hand, with these four categories of schools, the Board was able to reconcile all these principles.

To be more specific, principles #5 and #24, that "there will be no new operating grants for independent schools beyond that currently provided", and that "the Board recognizes the unique position of the historical high schools in the Saskatchewan education scene", dictated at a minimum the establishment of three categories of independent schools -- non-funded schools; the funded historical high schools, which are presently funded under *The Education Regulations*, sections 71 and 72; and the funded alternative schools, which are presently funded under *The Education Regulations*, clauses 61(b) and 61(o).[1]

Constitutionally, the government is not required to fund independent schools, but if it does fund some independent schools in accordance with certain criteria, then it must fund all schools that meet the same criteria equally. Since the Government of Saskatchewan presently funds the historical high schools and the alternative independent schools in accordance with different criteria, the Government must create, at a minimum two different categories of funded schools, as well as a third category of non-funded schools.

Then, at a minimum, principles #4, #10, #15, #25, and #27, but probably also principles #2, #6, #12, #13, #14, and #19, dictated the establishment of at least two categories of non-funded schools, namely registered schools and accredited schools. This makes four categories in all.

First, consider principle #15, that "independent schools are not public authorities". In contrast to public boards of education, who, under British common law, can typically do only those things which *The Education Act* authorizes them to do, independent schools, as legal persons, are permitted to do anything except what they are restricted from doing. Following the memorandum from Larry Anderson to Michael Littlewood,[2] independent schools are generally subject to three types of restrictions:

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[1] Cornwall Alternative School in Regina, Radius Tutoring in Saskatoon, and Ranch Ehrlo in Pilot Butte.

[2] See Appendix 7. This was also discussed in Chapter III, pp. 57-58.

- In the first instance, by laws that restrict the rights of individuals or corporations;
- In the second instance, by the Act under which they are incorporated, their own incorporating documents, and their own by-laws; and
- In the third instance, which is the most important for present considerations, by explicit provisions in legislation relating to their activities.

Typically, such latter restrictions arise at the point where the activities of legal persons come into contact with matters of public concern. In the case of independent schools, these would include applicable provisions of *The Education Act*, examples of which would be recognition of the school for purposes of compulsory attendance, exemption from municipal property taxation, recognition of the school's educational program for purposes of secondary level standing, and public funding.

One can conceive these four examples as an increasing level of "benefits" conferred on independent schools by *The Education Act* and the accompanying regulations in exchange for an increasing level of "requirements".

For instance, *The Education Regulations*, section 71, provides for grants to an independent high school where it:

(a) has been in operation for a period of not less than five years;
(b) has had an enrolment during each of the preceding two years of operation of not less than 60 pupils in Grades 9 to 12;
(c) meets the requirements of the minister and the regulations with respect to courses of study, qualifications of teachers, operating schedules and supervision;
(d) furnishes the minister with any information that he may require with respect to finances, structure, and administration of the school; and
(e) in the case of capital grants, submits preliminary drawings and cost estimates of proposed projects to the minister.

Implicit in these regulations is the presumption that not all independent schools will be eligible for funding, not even all independent high schools.

Second, *The Education Regulations*, section 29, provide for pupils enroled in independent schools to be eligible for secondary level credits if:

(a) the school is under the supervision of the department; and
(b) the department has approved:
    (i) the program and courses of study for pupils receiving instruction at the secondary level;
    (ii) the qualifications of the teachers instructing those pupils; and
    (iii) the arrangements for evaluating the work of those pupils.

Implicit in these regulations is the presumption that not all independent schools will be eligible to be "accredited".

Third, the recent amendments to *The Education Act* define, in clause 2(ee.1), a "registered independent school" as "an independent school registered pursuant to this Act and the regulations"; and provide, in clause 156(a.1), that

> 156. A pupil may be exempted from attendance at a school, and no parent, guardian, or other person shall be liable to any penalty imposed by this Act, where:
> (a.1) the pupil is in attendance at a registered independent school.

Section 372 of *The Education Act* also gives Cabinet the authority to make regulations, among other things:

> (c.1) respecting the registration of independent schools including prescribing the criteria to be met by independent schools to entitle them to be registered as registered independent schools;
> (c.2) classifying registered independent schools.

Registration represents acknowledgement or recognition that the independent school is providing its pupils a legitimate exemption from attendance in a public or separate school; accreditation represents an additional departmental sanction of the school's program, conferring, among other things, the eligibility of its pupils for secondary level standing.

Not all registered schools will necessarily be accredited. Indeed, the Board is recommending that the Department not accredit a school unless the school has operated successfully for at least one year.[3] Before accrediting a school, the Department can rightfully expect some indication of permanence -- a principle, for example, which is already in application, in *The Education Regulations*, section 71, with respect to the funding of independent high schools.

Then, at a minimum, principles #4, #10, #25, and #27 in Chapter III reinforced the Board's recommendation for two categories of non-funded schools, registered and accredited:

- In order to operate legitimately in Saskatchewan, independent schools will be required only to be registered and not licensed.
- Subject only to such reasonable limits prescribed by law as can be demonstably justified in a free and democratic society, parents have the right and the responsibility to provide for the education of their children in accordance with their religious convictions.
- The Board recognizes that most, although not all independent schools are religiously-based. In establishing a legal framework for independent schools in Saskatchewan, the Government is not interested in regulating religious institutions as such, but in regulating education.
- The Board will attempt to facilitate the effective operation of independent schools. Its recommendations will not be intended to have a negative impact on the ability of legitimate independent schools to operate.

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[3] This is recommendation (D.2.5) in Chapter VIII. See p. 163 below.

Registration involves a notice of intent to operate; licensing involves seeking permission to operate. *The Charter* and the separation of church and state require a category of schools that is not necessarily accredited. The purpose of establishing the Independent Schools Advisory Board was not to eliminate any existing schools, but to give existing schools a formal legal status, and where necessary, to assist them with improving the quality of their instruction, so that, over time, they might qualify for accreditation.

This distinction between registered schools, accredited schools, and the historical high schools is also consistent with Saskatchewan's educational practices and traditions with respect to private schools. Prior to 1971, the educational chief executive officers of local school divisions were provincial superintendents employed by the Department of Education. Such superintendents approved exemptions from compulsory attendance at a public or separate school; approved secondary level programs in private high schools; and, after 1967, supervised private high schools in respect of provincial funding. A private school did not necessarily have to be accredited in order to exist. In particular, the Seventh-day Adventist schools were not accredited by the Department of Education.

After 1971, however, as provincial superintendents retired, they were usually replaced by directors of education, appointed by and accountable to local school divisions. From that point until now, who precisely was responsible for the supervision of private (independent) schools, particularly the new independent schools that started after 1975, has been questionable -- hence, the legal vacuum in which such schools have existed. While these new schools have asserted that they are generally operating quality programs, the province has not had a mechanism to approve or evaluate their programs. After the *Jones* decision in 1986, the province could no longer ignore its responsibilities in this area.

In recommending that the Minister establish four categories of independent schools in Saskatchewan, the Advisory Board was also cognizant that other provinces have established different categories of independent schools, with a general distinction between registered and accredited schools.

Ontario distinguishes "listed" or "registered" private schools, which meet the definition of a private school in the definitions section of its *Education Act*, from "accredited" schools which meet the standard of instruction for provincial high school diplomas. Manitoba distinguishes "funded" from "non-funded" schools. Funded schools, which comprise both elementary and secondary schools, are, by definition, accredited, while non-funded schools are simply "listed" or "registered" with the provincial Department of Education and Training.

Alberta's *School Act*, 1988, provides for one category of registered schools, which are not eligible for provincial funding, and one category of accredited schools, which are eligible for funding. British Columbia's *Independent School Act*, 1989, provides for three classes of accredited schools, two of which are provincially funded, and two classes of registered schools, one of which is funded.

Table 2 in the Executive Summary provides an overall summary of the Board's recommended criteria for the four categories of schools in Saskatchewan, derived from the Board's recommendations in subsequent chapters of this report and from existing legislation and regulations.

V. Teacher Education, Certification, and Standards

Legislation and Regulations with Respect to Public Schools in Saskatchewan

At the request of the Board, Michael Littlewood and Kathie Tenold, Director and Assistant Director, respectively, of Board and Teacher Services for the Department of Education, gave a presentation to the Board on "Teacher Certification in Saskatchewan" at the fifth meeting of the Board on February 7, 1990. Most of the material in this section comes from their presentation.

From the point of view of the Advisory Board, the following sections of Saskatchewan's *Education Act* were particularly relevant to teacher education, certification, and standards issues:

- 2(oo) "teacher" means a person holding a valid certificate of qualification to teach in schools in Saskatchewan;

- 9 The minister shall:
  (g) make regulations for the classification and certification of teachers;

- 10(1) The minister may:
  (f) suspend or cancel, for cause, any certificate granted pursuant to the regulations;
  (l) make provision for the training of teachers, including those required for new or special programs or services to pupils;

- 91 A board of education shall:
  (e) appoint and employ under written contract duly qualified teachers for the schools of the division, and such principals and other assistants as the board considers necessary;

- 196 No person shall be engaged, appointed, employed or retained as a teacher or principal in any school unless he is in possession of a valid certificate of qualification issued pursuant to the regulations.

- 267 (1) There shall continue to be a board called the Board of Teacher Education and Certification consisting of:
  (a) three persons employed by the department, to be designated by the minister;
  (b) one person to be designated by the president of The University of Saskatchewan;
  (c) one person to be designated by the president of The University of Regina;
  (d) two persons to be designated by the executive committee of the federation; and
  (e) two persons to be designated by the executive committee of the association.

  (2) In addition to the members designated pursuant to clause (1)(a), the minister may, where he considers it advisable to do so, designate not more than two additional persons to be members of the board.

- 269 The Board of Teacher Education and Certification shall:
  (e) review from time to time the regulations under this Act governing teacher's certificates and recommend to the minister such changes in the regulations as it considers advisable; and
  (f) make recommendations to the minister with respect to the certification of any person whose status with respect to qualifications is referred to it.

In other words, Saskatchewan's public schools must employ teachers who possess a valid Saskatchewan teacher's certificate; the Minister has the duty to make regulations with respect to the certification of teachers; and the Board of Teacher Education and Certification (BTEC), among other things, advises the Minister with respect to (1) the substance of these regulations, and (2) disputes concerning the status of any individual with respect to teacher certification. BTEC is constituted from the major partners in Saskatchewan education concerned with teacher certification, with the Minister himself appointing no more than 5 out of 11 members.[1]

At the present time, individuals who receive their training in Saskatchewan may apply for one of five teacher's certificates, which are listed, along with the required qualifications, in Table 5.1: Professional "A", Standard "B", Professional "B", Vocational, and Technical. However, more than 95 percent of public education teachers possess Professional "A" Certificates. As shown in Table 5.2, teachers may qualify for a Professional "A" Certificate, either by the elementary route or by the secondary route, both of which include an academic component, a professional component, and a practicum. However, once individuals have a Professional "A" Certificate, their certificates are valid to teach in either the elementary or secondary grades.

In general, the qualifications for a teacher's certificate require a teacher (1) to understand the subject areas in which the teacher is teaching (the academic component); (2) to know how to teach *per se* (the professional component); and (3) to demonstrate an ability to teach (the practicum). While the Professional "A" Certificate stresses post-secondary academic training, the Vocational and Technical Certificates recognize work experience and technical training along with post-secondary training.

Teachers who qualify for one of the five certificates are issued a permanent certificate upon application. However, teachers from outside the province who qualify for one of these certificates must teach successfully in the province for one year before receiving a permanent certificate. In their first year, they will be issued a Provisional Certificate with the word "Provisional" preceding the type of certificate issued. After a full year (at least 190 days) of teaching, the provisional certificate may be replaced by a permanent certificate, on the recommendation of the supervising director or superintendent of education.

With respect to applications for provisional certificates from individuals who have received their training outside of Saskatchewan, say, from a denominationally-based teachers' college in Canada or the United States, the Department's certificate issuing official examines every transcript individually. The individual must possess a degree from an accredited college, but simply a degree from an accredited college is not sufficient. The individual's courses must also line up with the requirements for a Saskatchewan teacher's certificate.[2] The certificate issuing official relies upon the judgment of the two provincial universities with respect to which colleges are accredited.[3]

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[1] This particular structure and composition dates from the mid-1960s when the two Universities (at that time the two campuses of the University of Saskatchewan) assumed the responsibility for the education and training of teachers for Saskatchewan's public schools.

If, after August 15 of a particular year, a board of education has been unable to recruit a certified teacher for a particular position, then, in such an emergency situation, the board of education may apply to the Minister for a Probationary Certificate on behalf of an individual who lacks one or more of the qualifications for a regular certificate. Although no minimum requirements are stated for a Probationary Certificate, Grade 12 plus some additional qualifications are generally expected. Probationary Certificates will be issued only after the board of education has made a concerted effort to secure a suitable qualified teacher for a particular position, for which evidence of recruiting (advertising) must be provided. When a Probationary Certificate is issued, it is valid at most until the end of the school year. At the present time, Probationary Certificates are most commonly issued for French teachers teaching in French immersion programs.

The *Teachers' Federation Act*, subsection 5(1), requires that:

> All persons employed as teachers in schools organized or continued or receiving or eligible to receive grants pursuant to *The Education Act* shall, as a condition of their employment, be members of the federation.

The Teacher Certification and Classification Regulations, subsection 3(1), provide that the Department's certificate issuing official may "with the approval of the Minister, suspend, cancel or refuse to issue any certificate for what appears to the certificate issuing official to be adequate cause". However, the certificate issuing offical rarely, if ever, exercises this authority except on the recommendation of the Saskatchewan Teachers' Federation.

All teachers who are members of the STF are subject to the disciplinary process of the Federation. Upon receipt of a complaint about a teacher, either the Discipline Committee or the Professional Competency Committee of the Federation may hold a formal hearing and, if the complaint is found to be justified, the Federation may make a recommendation to the Minister with respect to an appropriate penalty.

During this last year (1989-90), it was brought to the attention of the Minister that the Department of Education had no policies or procedures in place with respect to the removal of an individual's teacher's certificate, if the individual was not presently teaching in a Saskatchewan public school. For example, if another province removed an individual's teacher's certificate for a sexual offence involving a child, the Minister had no mechanism to remove that individual's Saskatchewan teacher's certificate as well. Accordingly, BTEC has recently developed a policy statement that Saskatchewan teacher's certificates may be removed if individuals:

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[2] Indeed, an individual's courses at the Universities of Saskatchewan or Regina must also line up with the requirements for a Saskatchewan teacher's certificate. A B.Ed. degree, in and of itself, is not necessarily sufficient.

[3] The certificate issuing official makes the initial decision whether individuals meet the qualifications for a certificate. If negative, individuals may appeal this decision to BTEC.

- Have had their teacher's certificate removed by a Canadian education authority, either as a result of a criminal conviction or for reasons other than a criminal conviction; or

- Have been convicted of a criminal sexual offence or a criminal offence involving a child, and are not subject to the disciplinary process of the Saskatchewan Teachers' Federation.

Legislation and Regulations with Respect to Independent Schools in Other Provinces

At the request of the Board, the Secretariat to the Board reviewed the legislation and regulations pertaining to independent schools in six other provinces -- British Columbia, Alberta, Manitoba, Ontario, New Brunswick, and Nova Scotia.[4]

All six provinces generally require independent schools to report the names and the qualifications of their teachers to the provincial Department of Education. Other than this, however, no province has any legislative or regulatory requirements with respect to the qualifications of teachers in *registered* or *listed* independent schools. Such schools have the authority to establish their own qualifications for teachers and therefore the freedom to hire teachers who do not necessarily possess a valid provincial teacher's certificates.

With respect to *accredited* and *funded* schools, however, the situation is different.

In British Columbia, all teachers in the two classes of accredited/funded schools and 80 percent of the teachers in the one class of accredited/non-funded schools must be certified either by the College of Teachers or by the Inspector of Independent Schools. In practice, more than 70 percent of teachers are certified by the College of Teachers, and the remainder by the Inspector.

The Independent School Act defines a "certified teacher" as a teacher:

(a) who holds a certificate of qualification under *The Teaching Profession Act*,
(b) who holds a certificate of qualification issued by the inspector under this Act or the former Act, or
(c) with respect to whom a letter of permission has been issued to an authority by the inspector.

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[4] Newfoundland and Prince Edward Island have only a few independent schools each. While Quebec has a *Private Education Act*, which dates from 1968, and has put in place extensive regulations and administrative procedures governing the operation of independent schools, their laws are of a fundamentally different character from those in English-speaking provinces, as a result of the different legal and educational traditions in Quebec.

Also, *The Independent School Act*, as did the former 1977 Act, provides for the establishment of an "independent school teacher certification committee". On the recommendation of the committee, the Inspector may issue certification to a person or "issue a letter of permission to an authority permitting the authority to utilize the services of a person as a teacher for that authority for a specified time period". The independent school teacher certification committee generally recognizes professional education in denominationally-based colleges such as Canadian Union College (Seventh-day Adventist) in Lacombe, Alberta; and it recognizes academic education (e.g. a B.A. in history) not accompanied by professional education so long as the teachers are teaching their major subject. Such certifications or letters of permission are generally valid only for employment in a particular school or in a group of independent schools, such as the Seventh-day Adventist schools.

In Alberta, a private school is entitled to be *accredited* if the Minister is satisfied that "individuals whose qualifications are approved by the Minister are employed to teach at the school". At the present time, this means that the teachers must be provincially certified by the Teacher Certification Branch of the Department.

In Manitoba, to be eligible to receive provincial funding, the Minister must be satisfied that "the teachers teaching the approved courses to children enrolled in the private school hold valid and subsisting teacher's certificates issued under *The Education Administration Act*". However, provincial funding is given to each private school in proportion to the number of teachers in the private school that are certified. If, say, only 80 percent of the teachers in the private school were certified, then the private school would receive a grant equal to 80 percent of the full grant. Hence, funded/accredited schools can and do sometimes employ, say, a teacher with a Ph.D. in history, to teach secondary level history, in which case the school balances its perceived worth of this teacher with the subsequent loss of funds. Thus the regulations provide a monetary incentive, but not an absolute requirement for funded/accredited schools to employ mainly certified teachers.

In Ontario, criteria for *secondary level accreditation* suggest, but do not absolutely require, that schools should employ teachers with either professional or academic qualifications, that is, either a teacher's certificate or a B.A. degree with a major in the subject of instruction.

In addition, with respect to teacher certification, subsection 15(8) of Ontario's *Education Act* provides that

> the Minister may, on the request of a person operating a private school or of a person in charge of a conservation authority or field centre, provide for the inspection of a teacher in such school or centre who requires the recommendation of a supervisory official for certification purposes.

Neither New Brunswick nor Nova Scotia has any legislation, regulations, or other requirements with respect to the qualifications of teachers in independent schools.

Questions, Discussions, Recommendations, and Understandings

Question (A.1)

Will all teachers in independent schools be required to hold a valid Saskatchewan teacher's certificate?

Discussion

Not unexpectedly, this was one of the three or four most contentious issues that the Advisory Board considered. Along with some recommended modifications to existing criteria and processes respecting teacher certification in Saskatchewan in order to make these more responsive to the needs of independent schools -- question (A.2) below -- the Board agreed that teachers in accredited independent schools should be required to hold a valid Saskatchewan teacher's certificate. This was generally the situation in other provinces, and this would apply to all three categories of accredited schools -- the accredited schools *per se*, the historical high schools, and the alternative schools. Most of the Board's discussion centred on the registered independent schools.

In the ensuing discussion, the historical high schools generally shared the same views as the public education representatives. References to independent schools in this section generally refer to the other four groups of independent schools represented on the Board.

The representatives of these four groups of schools stressed that their schools were community-based. A strong sense of community was the essential ingredient, not only of their schools' effectiveness as perceived by the parents, teachers, and students, but also of their schools' survival. The public policy environment in which their schools have operated -- no public funding, the availability of public education alternatives, and regulatory leeway -- has required voluntary and exacting affiliation, selective admissions, and unusual personnel policies, all of which have contributed to this sense of community.[5]

Independent schools believed strongly that regulation and funding went hand-in-hand. It would be inequitable to regulate independent schools just like public schools without providing equivalent funding. Regulation did increase costs. Without any government funding, regulatory leeway was vital to the survival of many independent schools, for this regulatory leeway enabled such schools to be flexible. And flexibility was a crucial ingredient in keeping the costs of their schools as low as possible while maintaining the academic integrity of their programs.[6]

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[5] For a lengthier discussion of independent schools as community-based schools, see Appendix 24, Dave Wells, "Teacher Issues from an Independent School Perspective" (Presentation to the Advisory Board, January 9, 1990).

[6] See Appendix 18, Marge Bailey, "Presentation on Behalf of the Saskatchewan Association of Independent Church Schools" (December 12, 1989).

Against this background, independent school representatives explained that recruiting teachers was one of the most taxing, if not *the* most taxing aspect of operating an independent school since independent schools required teachers who shared the faith and practice of the parents and children in the school; who enjoyed working with children; who worked well as a team with the principal and the other teachers; who were qualified, professionally and academically; and who were willing to work for considerably lower wages than public education teachers.

As such, independent schools operated under somewhat different constraints from public schools. Their schools' inability to pay the same salaries as public schools and their particular concerns about personal faith, lifestyle and characteristics significantly reduced the population from which they could draw potential teachers. To require all teachers in all independent schools to hold a valid Saskatchewan teacher's certificate would prohibitively reduce the population from which they could select teachers, particularly when graduates of the two Colleges of Education in Saskatchewan were not particularly being trained to teach in independent Christian schools.[7]

Finally, the independent school representatives, other than representatives of the historical high schools, argued that freedom of conscience and religion, guaranteed under *The Charter of Rights and Freedoms*, and the separation of church and state required a category of schools in which teachers did not necessarily have to be state-certified. State-certification of teachers in religiously-based schools was akin to the licensing of churches by the state. By licensing a part of the school's operation, the state would in effect be licensing the church, contrary to principle #4, laid down by the Minister, that independent schools in Saskatchewan would be required only to be registered and not licensed. Fred Reimer, the Church of God in Christ (Mennonite) representative on the Advisory Board, had actually been one of the parents charged in the *Wiebe* case in Alberta, when the court had found that state-certification of teachers was an unnecessary intrusion of the state into the operation of a church school.

For precisely these reasons, no other province (save Quebec) required teachers in registered schools to be state-certified. Such schools had the authority to establish their own qualifications for teachers and therefore the freedom to hire teachers who did not necessarily possess valid provincial teacher's certificates.

Independent schools were not interested in poor quality education, but they were interested in freedom. While the state had a compelling interest in the education of children, the church also needed to be protected from the state. The separation of church and state meant that the church and state were parallel institutions in our society. Neither the church was above the state nor the state above the church. History had shown the dangers to individual freedom of either situation.

Public education representatives on the Board responded by appreciating that independent schools were often community-based, but they did not perceive educational regulations as impositions on the operation of schools. Rather, they saw regulations as guarantees of quality education for children.

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[7] See Appendix 25, Dawn Beaudry, "A Christian Critique of the University of Saskatchewan's College of Education Undergraduate Teaching Program" (September 1989, presented to the Advisory Board on January 9, 1990).

Public education representatives challenged independent schools' interpretation of *The Charter*, the *Jones* case, and the *Wiebe* case. Did *The Charter* really require a category of schools in which teachers were not required to be state-certified? In the opinion of the SSTA solicitor, throughout its judgment in the *Jones* case, the Supreme Court of Canada

> confirmed that the government has a compelling interest in the education of children and that it is entitled to ensure that minimum standards of education are being met.
>
> Clearly, the Court is aware that the persons best able to determine minimum standards of education are educators rather than the courts. Of course, those minimum requirements can not be determined in the abstract or in an arbitrary manner.
>
> In seeking to set out some guidelines for efficient instruction, I can see no arbitrariness or unreasonableness in stipulating that the persons who deliver that instruction have been certified in some way as having an adequate background to be able to teach effectively. I know of no religious beliefs which would hold that persons who have such a certificate are not proper teachers. Even if there were, I submit that section 1 of the Charter would allow the government to insist that there be evidence that a teacher employed by an independent school be an effective teacher. The *Jones* case supports the idea that the province may use a board such as the Board of Teacher Education and Certification to determine that question.[8]

The "purpose" of state-certification of teachers was not to license independent schools any more than the purpose of licensing medical doctors was to license hospitals. Therefore, the state-certification of teachers was not inconsistent with principle #4 laid down by the Minister. Even registered schools should meet some criteria in respect of teacher certification. Not requiring that all teachers in independent schools be certified in some manner was beyond the pale and unacceptable.

A teacher's certificate was a manifestation of the compelling interest of the state in the education of children. On the one hand, it was a statement of minimum standards to ensure children a quality education, and on the other hand, a screen to provide some assurance that a teacher was a person of good character. It could not, of course, replace decisions made by potential employers with respect to recruitment of teachers, but taken together, the certification and employment processes were important steps in providing for a high quality of education and for the protection of children.

The Board searched for recommendations that would preserve the religious conscience of independent schools while safeguarding the public interest in the education of children in independent schools.

While independent schools other than the historical high schools had long regarded a requirement for the state-certification of teachers, no matter how minimal the requirements, as a violation of the separation of church and state, they agreed that the state did have a legitimate interest with respect to who was teaching in even a registered independent school. Furthermore, independent schools conceded that existing mechanisms to protect the state's interests might be exceedingly slow and could appropriately be supplemented by a more explicit, pro-active process.

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[8] Appendix 10, LaVonne Beriault, "Regulation of Independent Schools with Respect to Curriculum and Qualifications of Teachers" (Memorandum to Bill Wells, April 24, 1990).

The public education representatives, while they firmly believed that all teachers in all schools should be professionally trained, recognized that religiously-based communities enjoyed historical rights to operate schools, not necessarily in complete accordance with public education practices. They also acknowledged a distinction between the "eligibility" and the "qualifications" of teachers.

In general parlance, a "certificate" referred to some level of qualifications deemed appropriate for the issuance of the certificate, and a "probationary certificate" implied that the individual had not yet achieved this level of qualifications. Whether an individual had a record, say, of child abuse, related more to "eligibility" than to qualifications.

The Supreme Court of Canada had made this same distinction between eligibility and qualifications in *Caldwell et al.* v. *Stuart et al.*[9] BTEC, too, had just approved a policy statement on March 21, 1990, which made the same distinction, dealing with the removal of a Saskatchewan teacher's certificate from an individual who had been convicted of a criminal sexual offence or a criminal offence involving a child, and who was not otherwise subject to the disciplinary process of the Saskatchewan Teachers' Federation.

Therefore, the Board agreed that teachers in religiously-based registered independent schools should be required to hold either a valid Saskatchewan teacher's certificate or what the Advisory Board eventually decided to call a "Letter of Eligibility to Teach". If a religiously-based registered independent school sincerely believed that it had the freedom and authority to establish the qualifications for teachers in its school, then it could apply to the Minister for a Letter of Eligibility To Teach on behalf of a teacher. Persons would be ineligible to teach, for example, if they had committed a sexual offence involving a child.

Since only religiously-based independent schools would be able to apply for a Letter of Eligibility To Teach, a recommended policy statement with respect to the Letter of Eligibility To Teach is dealt with further under question (A.3) below.

Recommendations

(A.1.1) *That teachers in religiously-based registered independent schools must hold either a valid Saskatchewan teacher's certificate or a Letter of Eligibility to Teach, while teachers in all other registered and accredited independent schools must hold a valid Saskatchewan teacher's certificate.*

(A.1.2) *Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that recommendation (A.1.1) is not intended to diminish or*

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[9] (1984) 2 Supreme Court Reports 603. See Chapter III, principle #19, pp. 60-61 above.

to infringe upon:

- *(a) the religious conscience of any independent school; or*
- *(b) the right of any independent school to hire only teachers who share the faith and practice of the organization that owns or operates the independent school.*

Understandings

Unless otherwise stated, in these and subsequent recommendations, the term "accredited schools" refers to all three classifications of accredited schools combined: the accredited schools *per se*, the historical high schools, and the alternative schools.

Even though the state-certification of teachers is akin to the state-licensing of teachers, it is not the "purpose" of state-certification of teachers to license independent schools any more than it is the purpose of licensing medical doctors to license hospitals. Therefore, these recommendations are not inconsistent with the administrative framework laid down by the Minister that independent schools will only have to be registered (as opposed to licensed) with Saskatchewan Education in order to operate legitimately in Saskatchewan.

However, in situations in which a religiously-based school has a limited pool of teachers from which to draw, it is possible that the "effect" of state-certification of teachers may be to license a school. Recommendations (A.2.3), (A.2.4), (A.3.1), and (A.3.2) below provide safeguards to independent schools in this respect.

As the Supreme Court has said in the *Jones* case, having to apply for a Letter of Eligibility is not, in and of itself, a violation of religious conscience. It is sufficient to protect an independent school against the disregard of its freedoms or against procedural unfairness at the point of application.

Having to apply for a Letter of Eligibility is a pro-active process, rather than a re-active process, that permits the Minister to remove a Letter of Eligibility under appropriate circumstances.

Question (A.2)

What accommodations, if any, need to be made to existing criteria and processes respecting teacher certification in Saskatchewan to make them responsive to the needs of independent schools?

Discussion

The teacher education, certification, and standards committee began its discussion of this question by reviewing Kathie Tenold's presentation to the Board at its fifth meeting on February 7, 1990. Then the committee discussed five common situations faced by independent schools in respect of teacher certification, and to what extent existing processes and criteria (centred on BTEC) were sufficiently flexible to deal with these situations:

- Individuals recruited from outside Saskatchewan;
- Individuals with academic degrees but no professional training;
- Individuals with professional degrees from denominationally-based teachers' colleges that were not presently recognized as accredited by BTEC;
- Individuals with degrees or diplomas from theological seminaries, Bible schools, and Bible training centres; and
- Individuals apprenticed to senior teachers.

Individuals recruited from outside the province who otherwise possessed the qualifications for, say, a Professional "A" Certificate would initially receive a Provisional Certificate. But, at the present time, there was no mechanism for such individuals to have their certificates upgraded to permanent certificates. Consequently, the committee agreed that the Department should provide supervisory services to independent schools in order to support and recommend such a teacher's application for a permanent certificate.

The Department could arrange for supervision:

- from the regional offices of the Department;
- by a full-time superintendent located, say, in the Independent Schools Branch; or
- as needed, on a contract basis;

but the committee viewed addressing this matter further as outside the mandate of the Board.[10]

Independent school boards could apply for Probationary Certificates on behalf of the other teachers on the above list. However, the currently existing Probationary Certificate was really to accommodate public boards of education who found themselves in an emergency situation two weeks before the beginning of a particular school year. In practice, the major requirement for issuing a Probationary Certificate was evidence of a concerted, but unsuccessful effort to secure a suitable qualified teacher for a particular position. (See Table 5.3.) As such, the currently existing Probationary Certificate was not appropriate for independent schools who wanted to hire individuals with, say, degrees or diplomas from universities or theological seminaries on a longer-term basis.

Consequently, over the course of four meetings, the teacher education, certification, and standards committee developed and refined a policy statement for a proposed Probationary "B" Certificate, designed specifically for the needs of independent schools, to which the Board also agreed. (See Table 5.4.) The major similarities and differences between the existing and the proposed probationary certificate are the following:

- In both cases, boards of education must apply for the certificate on behalf of the teacher, except that the independent school board must submit its application, in the first instance, to the Department's supervisory official for independent schools;

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[10] The issue of Departmental supervision of independent schools is also discussed in greater length in Chapter VI, question (B.6), below.

- For a Probationary "B" Certificate, the Department's supervisory official must transmit the application, with an opinion, to the certificate issuing official;[11]

- Since independent schools usually recruit from a small pool of prospective teachers, they will not be required to submit written evidence of recruiting. However, they must describe the recruiting process that they followed;

- Both public and independent school boards must renew probationary certificates annually;

- No minimum requirements are stated for either probationary certificate. However, Probationary "B" Certificates will generally be issued to individuals in the situations listed on the policy statement;

- Probationary "B" Certificates may be restricted to the performance of particular duties in the independent school for which it is issued;

- Independent school boards may apply for Probationary "B" Certificates after June 30 for duties to commence in the fall term; and

- The Probationary "B" Certificate requires permission to conduct a criminal record check. While the existing probationary certificate does not yet require this, BTEC has recently recommended this addition to the existing probationary certificate.

With respect to teachers in independent schools who were apprenticed to senior teachers, BTEC already allowed a year of successful teaching experience in a public school as an acceptable substitute for a practicum. The teacher committee proposed and the Board agreed that BTEC should also consider a year of successful teaching experience in an independent school as an acceptable substitute for a practicum so long as this was appropriately supported by a supervisory official, such as the Department's supervisory official for independent schools. A year of successful teaching experience could not, however, substitute for professional education courses in a recognized university or teachers' college.

Structures like BTEC had been established to maintain standards within the public education system, that is, for schools that were public authorities. They had not necessarily been designed with schools that were not public authorities (i.e. independent schools) in mind, simply because not many independent schools existed when these structures were established. If accredited independent schools were going to be required to fit into the scope of regular certification requirements, and if registered schools were going to be encouraged to become accredited over time, then the representatives of the independent schools argued that independent schools should now have representation on structures like BTEC, which was the board that reviewed and recommended changes to the regulations governing teacher's certificates, and that made recommendations to the Minister with respect to the certification of individual persons as teachers.

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[11] In order to allow existing appeal mechanisms for teacher certification, centred on BTEC, to work, the Department's supervisory official will not have the authority to turn down an application. See Chapter VIII, p. 169.

While the Advisory Board was within its mandate to recommend changes to the structure and composition of BTEC, the public education representatives were not willing to agree to changes in the present structure and composition of BTEC, in which the Minister designated no more than 5 out of 11 members. However, the public education representatives were willing to agree that the Minister "consider" representation from independent schools within the present structure and composition of BTEC, that is, either from among the three persons employed by the Department [*The Education Act*, clause 267(1)(a)], or from among the two additional members that the Minister considers it advisable to appoint [clause 267(2)]. In any event, no one organization represented all independent schools in Saskatchewan. Therefore, the Minister could not request one particular organization to designate an individual on behalf of all independent schools.

Such a representative would provide an independent school perspective with respect to teacher certification, but would not be purely an advocate for independent schools. While on occasion he/she could be expected to argue a case from an independent school perspective, he/she would also be concerned with the overall Saskatchewan educational system.

Recommendations

(A.2.1) *That a year of successful teaching experience in an independent school, appropriately supported by a supervisory official, be acceptable for upgrading a provisional teacher's certificate to a permanent certificate.*

(A.2.2) *That a year of successful teaching experience in an independent school, appropriately supported by a supervisory official, be an acceptable substitute for a practicum.*

(A.2.3) *That a Probationary "B" Teaching Certificate be created consistent with the policy statement in Table 5.4.*

(A.2.4) *That an independent school board may apply to the Department's certificate issuing official for a Probationary "B" Teaching Certificate on behalf of a teacher.*

(A.2.5) *That the Minister consider representation from independent schools on the Board of Teacher Education and Certification (BTEC), within the present structure and composition of BTEC.*

Understandings

Recommendation (A.2.1) means that the Department's supervisory official for independent schools would generally be responsible for determining that a teacher with a Provisional Certificate has had a year of successful teaching experience and recommending that this teacher receive a permanent certificate.

Recommendation (A.2.2) also means that the Department's supervisory official for independent schools would generally be responsible for determining that the applicant has had a year of successful teaching experience.

Question (A.3)

How should the recommendations be sensitive to those independent schools who emphasize the faith of their teachers as a qualification for teaching?

Discussion

Following the discussion with respect to question (A.1), the Board agreed that only religiously-based independent schools that sincerely believed as a matter of religious conscience that they had the freedom and authority to establish the qualifications of their teachers, could apply to the Minister for a Letter of Eligibility to Teach on behalf of a teacher.

In other words, such schools were, in the words of Justice La Forest in the *Jones* case "claiming exemption from the operation of an [otherwise] valid law" on the basis of their sincere belief. The Board noted that legislative provision for such types of exemptions was not uncommon.

For example, at the federal level, *The Military Service Act*, 1917, S.C. 7-8 GEO. V, c. 19, provided for an exemption from military service, as follows:

> 11(1) At any time before a date to be fixed in the proclamation mentioned in section 4, an application may be made by or in respect of any man in the class or subclass called out by such proclamation to a local tribunal established in the province in which such man ordinarily resides, for a certificate of exemption on any of the following grounds:
>
> (f) that he conscientiously objects to the undertaking of combatant service and is prohibited from so doing by the tenets and articles of faith in effect on the 6th day of July 1917 of any organized religious denomination existing and well-recognized in Canada at such date and to which he in good faith belongs;
>
> And if any of the grounds be established, a certificate of exemption shall be granted to such man.

Also, at the provincial level, the Saskatchewan *Trade Unions Act* provides for an exemption from membership of a trade union, as follows:

> 5 The [Labour Relations] Board may make orders:
>
> (l) excluding from an appropriate unit an employee whom the Board finds in its absolute discretion, objects:
>
> (i) to joining or belonging to a trade union; or
>
> (ii) to paying dues and assessments to a trade union;
>
> as a matter of conscience based on religious training or belief during such period that the employee pays:
>
> (iii) to a charity mutually agreed upon by the employees and the trade union that represents the majority of employees in the appropriate unit; or
>
> (iv) where agreement cannot be reached by these parties to a charity, designated by the Board;
>
> an amount at least equal to the amount of dues and assessments that a member of that trade union is required to pay to the trade union in respect of such period.

Both these exemptions specifically distinguish conscience based on religious training or beliefs from other types of conscience.

Professor McConnell advised the Board that, in the first instance, when individuals claimed an exemption based on a sincere religious belief, sincerity was assumed. That is, individuals were assumed to act in good faith.

However, individuals' sincerity could subsequently be challenged on one of several grounds:

- That their religion was not a *bona fide* religion, but just a sham to claim the benefits accruing to religious status;
- That the tenets and articles of faith of their religion did not in fact entitle them to the exemption; or
- That they were not sincerely practising in conformity with the articles and tenets of faith of their religion.

Ordinarily, in most civil disputes, plaintiffs or informants first have the onus, on a balance of probabilities, to make their case. Once a certain threshold of evidence has been met, however, the onus would then shift to the defendants or respondents to defend their sincerity of belief. In legislation or in regulation, the government may impose an onus different from the ordinary one.

The proposed policy statement for the "Letter of Eligibility to Teach" follows a format similar, but not identical to that of the probationary certificates. (See Table 5.5.) The major difference is that the independent school will apply directly to the Minister of Education, not to the Department's certificate issuing official, since the Letter of Eligibility is specifically not a certificate.

The wording of the two exclusions on the Letter of Eligibility has been taken directly from the recent policy statement (March 21, 1990) of the Board of Teacher Education and Certification with respect to the suspension and cancellation of teacher's certificates.

Recommendations

(A.3.1) *That a Letter of Eligibility to Teach in a Religiously-Based Registered Independent School be created consistent with the policy statement in Table 5.5.*

(A.3.2) *Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that only a religiously-based registered independent school board may exercise an exemption from the state's normal certification requirements and may apply to the Minister for a Letter of Eligibility to Teach on behalf of a teacher.*

Understandings

A religiously-based independent school board may exercise this exemption from the state's normal certification requirements based on a sincere and conscientious belief that it, as a religiously-based institution, has the freedom and authority to establish the qualifications of its own teachers.

The proposed Letter of Eligibility To Teach is specifically not a certificate, since a certificate generally refers to some level of qualifications deemed appropriate for the issuance of the certificate. On the other hand, this does not mean that independent schools may hire teachers without appropriate qualifications for teaching in a religiously-based independent school. For this reason, the Independent Schools Review Board will monitor on a regular basis the issuance of both Probationary "B" Teaching Certificates and Letters of Eligibility to Teach.[12]

Since the proposed Letter of Eligibility is not a certificate, a religiously-based registered independent school would apply for a Letter of Eligibility directly to the Minister of Education, not to the Department's certificate issuing official.

The two exclusions in the Letter of Eligibility do not exclude the possibility of forgiveness for crimes committed in the past.

On the application for a Letter of Eligibility, the teachers themselves would also have to declare a sincere belief that their school, as a religiously-based institution, had the freedom and authority to establish the qualifications of teachers in the school. In the first instance, the Minister would assume that the individual who declared this sincere belief was acting in good faith.

Question (A.4)

What recommendations concerning teacher preparation -- both courses of study and practicum -- should be made to the two Colleges of Education?

Discussion

The teacher education, certification, and standards committee began its discussion of this question by reviewing the roles of the Colleges of Education[13] in the education and training of teachers for Saskatchewan schools, including the three components of teacher education and training: academic training, professional training, and practicum.

The University of Saskatchewan, College of Education, representative on the Advisory Board also submitted to the committee a memorandum with respect to the position of his College on courses of study and practicum as they related to independent schools.

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[12] See recommendations (D.4.1) to (D.4.5) on page 170 below.

[13] Colleges of Education refers to both the College of Education at the University of Saskatchewan and the Faculty of Education at the University of Regina.

There existed three federated colleges in Saskatchewan from which students could take academic courses from a Christian perspective: St. Thomas More at the University of Saskatchewan, and Campion and Luther Colleges at the University of Regina.

In the present economic environment, the Colleges of Education could not be expected to introduce new classes specifically for the training of teachers for independent schools. The most that could be expected would be modifications to some existing courses in order to portray the role of independent schools in the overall education system.

Since the Colleges of Education were public institutions, it would also be inappropriate for the Advisory Board to make recommendations concerning the Colleges that reflected particular philosophical critiques of the Colleges of Education from an independent school perspective. The Seventh-day Adventists had established their own teachers' colleges precisely for this reason that public universities could not be expected to reflect a particular philosophical point of view. In any event, it was not clear what recommendations of this nature would add to the final report.

Recommendations

(A.4.1) *That the Colleges of Education consider allowing students to complete their field experience in accredited independent schools.*

(A.4.2) *That the Colleges of Education consider incorporating the study of independent schools into the Colleges' programs of studies in order to portray the role of these schools in the overall education system.*

Understandings

In conformity with the present practice in public schools, teachers supervising interns in independent schools would be selected on the recommendation of the Department's supervisory official for independent schools and the principal of the independent school. A supervisory teacher is not absolutely required to hold a Professional "A" Certificate.

Education students have for many years completed their field experience in some of the historical high schools.

With respect to (A.4.2), independent schools would be discussed from an academic point of view, not a religious point of view. The Colleges would seek input from independent schools themselves when incorporating the study of independent schools into their programs of study.

The Colleges of Education would appreciate that they are training teachers for all Saskatchewan schools, not just public and separate schools.

Question (A.5)

Under what circumstances can STF membership be extended to teachers in independent schools?
(a) What services can be provided?
(b) What changes would be required to legislation or STF bylaws?

Discussion

The teacher education, certification, and standards committee began its discussion of this question by reviewing the various classes of members of the STF:

- Full, fee-paying members: those who were presently teaching in public and separate schools, and the historical high schools;

- Full, non-fee-paying members: students of the two Colleges of Education;

- Associate members: certified teachers who were not teaching in public or separate schools; directors of education; and faculty of the two Colleges of Education were eligible for associate membership. Associate members received the *STF Bulletin* and had access to the Stewart Resource Centre;

- Honorary life members and superannuated members.

At the present time, the STF bylaws did not permit teachers in non-funded independent schools to become full fee-paying members of the STF.

Many Directors of Education were associate members of the STF. Directors and teachers shared the same pension plan. Teachers in the historical high schools also participated in this plan.

The STF and the Department jointly sponsored accreditation seminars for teachers. The STF presently permitted associate members to attend such seminars. The Department would be ultimately responsible, however, for extending accreditation to Grade 12 teachers in non-funded independent schools. See recommendation (B.7.1) below.

Recommendations

None.

Understandings

A specific recommendation with respect to this question is unnecessary. The STF representatives on the Board indicated the Federation (1) may be open to providing services to certified teachers in non-funded independent schools, and (2) may be prepared to examine its own categories of membership in order to provide such services.

Table 5.1

Saskatchewan Teacher Certification (Currently Existing)

Certificates	Grades in Which Certificates Are Valid	Educational Requirements
Professional "A"	K-12	Saskatchewan Grade 12 (or equivalent), plus four years resulting in a B.Ed or a B.A. (or equivalent degree) and 48 semester-hours of professional education including a practicum.
Standard "B" (Endorsed)	K-12 (Limited)	Saskatchewan Grade 12 (or equivalent), plus one year of specialized post-secondary training, plus two years of teacher education, including 48 semester-hours of professional education including a practicum.
Professional "B" (Endorsed)	K-12 (Limited)	Saskatchewan Grade 12 (or equivalent), plus a degree in an approved area of specialization (or equivalent), plus 48 semester-hours of professional education including a practicum.
Vocational (Endorsed)	K-12 (Limited)	Saskatchewan grade 12 (or equivalent), plus a journeyman's certificate or approved training in a trade, plus one year of teacher education including a practicum.
Technical (Endorsed)	K-12 (Limited)	Saskatchewan grade 12 (or equivalent), plus two years' study in a defined technology at the post-secondary level, plus three years of work experience, plus one year of teacher education including a practicum.
Probationary	Issued on application of board of education to person who lacks qualifications to teach. It is valid for one year, and confers eligibility to teach particular subjects at a specified level in a certain school.	

1. Teachers from outside the province who qualify for one of the above certificates must successfully teach for one year in Saskatchewan before receiving permanent certification. The type of certificate issued in such cases is preceded by the word "**Provisional**".

2. Teachers trained inside the province who qualify for one of the above certificates are issued a permanent certificate upon application.

Table 5.2

Policy Statement (Currently Existing)
Programs Acceptable for Professional "A" Certificates

A degree and four years of post-secondary education above an equivalent Saskatchewan Grade 12 are basic requirements.

Elementary Route

The academic component must include the following:

- a minimum of 40 semester hours in at least three teaching fields; and,
- at least 4 semester hours in English (or other acceptable communications class) which may be included in the 40 semester hour requirement.

The professional component must include the following:

- 48 semester hours in total, including a practicum; and,
- the following compulsory courses:

  Reading and Language (6 semester hours)
  Educational Psychology (6 semester hours)
  Science
  Social Studies
  Mathematics

The practicum must include an eight-week block of teaching at the elementary level in a variety of subject fields. A year of successful teaching experience in any field may be accepted in lieu of the eight weeks of teaching at the elementary level.

Secondary Route

The academic component must include the following:

- a major (24 semester hours) in a teaching field
- a minor (16 semester hours) in a second teaching field; and,
- at least 4 semester hours in English (or other acceptable communications class) which may be included in the 40 semester hour requirement.

The professional component must include the following:

- 48 semester hours in total, including a practicum;
- at least 3 semester hours in education related to the major;
- at least 3 semester hours in education related to the minor; and,
- at least 6 semester hours in Educational Psychology.

The practicum must include an eight-week block of teaching in the major and minor fields. A year of successful teaching experience in any field may be accepted in lieu of the eight weeks of teaching in the major and minor fields.

Table 5.3

Policy Statement (Currently Existing)
Issue of Probationary Teaching Certificates

Saskatchewan Education recognizes the difficulty that may be encountered by school boards in securing qualified teachers for substitute teaching, part-time teaching and, in some cases, full-time classroom teaching.

It is the intention, however, to issue Probationary Certificates only in emergency situations and after a concerted effort has been made to secure the services of a qualified teacher.

- A Probationary Certificate will be issued only upon application by a Board of Education.
- An application must be approved by the Superintendent or Director of Education.
- The Board of Education must submit its request on a current Application for a Probationary Certificate.
- Probationary Certificates will be issued only after a concerted effort has been made to secure a suitable qualified teacher for a particular position. Evidence of recruiting (advertising) must be provided.
- When a Probationary Certificate is issued, it will be valid for the time period requested, but in no case beyond the end of the school year.
- Although no minimum requirements are stated for Probationary Certificates, Grade XII plus some additional qualifications will generally be expected. Consideration may be given to persons having special qualifications in a particular field, even though high school may not have been completed.
- Probationary Certificates will not be issued until after August 15 for duties to commence in the fall term.

Each initial application form must be accompanied by:

- evidence of applicant's secondary and post-secondary education;
- copy of his/her Birth Certificate or signed Statement of Place and Date of Birth; and
- Change of Name form (if applicable).

Table 5.4

Policy Statement (Recommended by Advisory Board) Issue of Probationary "B" Teaching Certificates

Saskatchewan Education recognizes the difficulty that may be encountered by independent school boards in securing certified teachers who share the faith and practice of the parent organization that owns or operates the independent school.

Saskatchewan Education further recognizes that independent schools, by virtue of their religious or philosophical orientation, may require teachers with unique training and/or qualities.

Probationary "B" Certificates may be issued on an annual basis to teachers in registered or accredited independent schools where the independent school has been unable to secure the services of a certified teacher who also meets the religious or philosophical requirements of the school.

- A Probationary "B" Certificate will be issued only upon application by an independent school board.
- An application must be approved by the principal or director of the independent school.
- The independent school board must submit its request on a current Application for a Probationary "B" Certificate to the Department's supervisory official for independent schools.
- The Department's supervisory official for independent schools must transmit the application, with an opinion, to the Department's certificate issuing official.
- Probationary "B" Certificates will be issued only after a concerted effort has been made to secure a suitable certified teacher for a particular position, or a satisfactory explanation has been provided why such an effort has not been made. The recruiting process followed must be described.
- When a Probationary "B" Certificate is issued, it will be valid for the time period requested, but in no case for more than one year.
- No minimum requirements are stated for Probationary "B" Certificates. Without restricting the generality of the foregoing, Probationary "B" Certificates will generally be issued to individuals:

  (1) who hold a teacher's certificate from another province or state;
  (2) who hold a degree from a recognized university or college;
  (3) who hold a teaching degree from a denominationally-based college;
  (4) who hold a degree or diploma from a theological seminary, Bible school, or Bible training centre;

(5) who possess appropriate non-certified qualifications such as professional experience, vocational experience, or special skills; or
(6) who have taught successfully for the equivalent of five years or more in the school or system of schools in which the teacher will be teaching.

- Probationary "B" Certificates may be restricted to the performance of particular duties in the independent school for which it is issued.

- Probationary "B" Certificates will not be issued until after June 30 for duties to commence in the fall term.

Each initial application form must be accompanied by:

- evidence of applicant's secondary and post-secondary education;
- copy of his/her Birth Certificate or signed Statement of Place and Date of Birth;
- Change of Name form (if applicable);
- other substantiating documents relating to education and experience (where applicable); and
- permission to conduct a criminal record check.

Table 5.5

Policy Statement (Recommended by Advisory Board)
Issue of Letters of Eligibility to Teach in a Religiously-Based Registered Independent School

The Minister of Education acknowledges that, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, parents have the right and responsibility to provide for the education of their children in accordance with their religious convictions by enroling their children in independent schools.

The Minister of Education further acknowledges that some religiously-based registered independent schools conscientiously believe that they, as religiously-based institutions, have the freedom and authority to establish the qualifications of teachers in their own schools.

Letters of Eligibility may be issued only to teachers in such registered schools.

- The Minister will issue a Letter of Eligibility only upon application by a religiously-based registered independent school board.
- An application must be approved:
  (1) by the principal or director of the independent school; and
  (2) by the Department's supervisory official for independent schools.
- The independent school board must submit its request on a current Application for a Letter of Eligibility.
- When a Letter of Eligibility is issued, it will be valid for one year and renewable annually.
- No minimum requirements are stated for Letters of Eligibility. Without restricting the generality of the foregoing, Letters of Eligibility may not be issued to individuals who:
  (1) have had their teacher's certificate suspended or cancelled by a Canadian education authority; or
  (2) have been convicted of a criminal sexual offense or a criminal offense involving a child.
- A Letter of Eligibility will not be issued or renewed until after June 30 for duties to commence in the fall term.

Each initial application form must be accompanied by:

- copy of the applicant's Birth Certificate or signed Statement of Place and Date of Birth;
- Change of Name form (if applicable); and
- permission to conduct a criminal record check.

VI. Curriculum, Instruction, and Evaluation

Legislation and Regulations with Respect to Public Schools in Saskatchewan

At the request of the Board, Fred Renihan, Assistant Deputy Minister for Curriculum and Evaluation, gave a presentation to the Board on "Saskatchewan Provincial Curriculum Policy" at the second meeting of the Board on November 28, 1989. Much of the material in this section comes from his presentation.

From the point of view of the Advisory Board, the following sections of Saskatchewan's *Education Act* were particularly relevant to curriculum, instruction, and evaluation issues.

- 9 The minister shall:
  (c) provide courses of study or curriculum guides pertaining to courses of instruction authorized under the regulations with respect to kindergarten, elementary, and secondary schools;
  (d) make provision for the preparation and publication, as he considers fit, of information with respect to goals, objectives and educational planning insofar as they pertain to the present and future growth and development of the educational system of the province;
  (e) provide lists of textbooks, apparatus, equipment and of other materials that he may prescribe, approve or recommend for use in the schools;
  (f) make provision for in-service education programs and related activities which pertain to implementation of new programs and courses;
  (i) subject to subsection 164(2), determine annually the number of school days in the school year for the purposes of the operation of schools.

- 10(1) The minister may:
  (h) appoint a superintendent for any area designated by the minister and prescribe the powers and duties of any person so appointed;
  (i) authorize textbooks for the use of pupils and teachers in all schools;
  (i.1) recommend reference books as well as those maps, globes, charts, apparatus and equipment that he may consider necessary to ensure an optimum quality of instructional services in all schools;
  (j) prescribe the subjects of instruction and issue courses of study for each year or grade from kindergarten to Grade 12, or such combination of those grades as may be classified as Elementary, Middle and Secondary Levels, for all schools, and may define compulsory and optional subjects and course requirements for completion of a grade or year of study;
  (k) authorize a course of study developed by a school and approved by the board of education to be taught as an alternative, or in addition, to a course or courses prescribed by the department.
  (r) make provision for the inspection of registered independent schools.

- 91 A board of education shall:
  (j) subject to the regulations, authorize and approve the courses of instruction which shall constitute the instructional program of each school in the division;

- 92 A board of education may:
  (e) subject to the regulations, approve textbooks, reference books and library materials for use in the schools of the division;

- 106(1) A board of education shall appoint a director of education;

- 107 The director of education shall be designated the chief executive officer of the board of education.

- 108 The board of education shall prescribe the powers and duties of the director and, in addition, the director shall:
  (a) prepare and transmit to the department such reports and returns as may from time to time be required by the minister;
  (b) insure that the schools are conducted in accordance with this Act, the regulations and the policies of the board in all matters within its jurisdiction;
  (c) exercise general supervision of the schools and the work of principals, teachers, and other personnel employed by the board;
  (d) provide educational leadership and liaison involving the board, the professional staff and the public pertaining to the efficiency and advancement of education in the division.

- 156 A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penalty imposed by this Act, where:
  (b) the pupil is unable to attend school by reason of illness, certified by a physician if required by the board of education, or other unavoidable cause considered sufficient by the local attendance counsellor;
  (f) the director or superintendent, upon due inquiry or investigation, is of the opinion, and certifies in writing to that effect, that continued attendance at school is not productive or is detrimental to the pupil or to the school;
  (g) the pupil is engaged in work-experience or other educational programs authorized or approved by the board of education.

- 164(1) The school year shall be divided into:
  (a) two terms ending on December 31 and June 30 respectively;
  (b) two semesters ending on January 31 and June 30 respectively; or
  (c) such other periods as the board of education, with the approval of the minister, may determine.

  (2) There shall be two hundred school days in a school year, but the minister may, in any year, by order determine for that year such lesser number of school days as he considers advisable.

  (3) Subject to subsections (1) and (2), the opening and closing dates of schools and the

general schedule of operation for the school year and for any term, semester or other period therein shall be determined by the board of education.

(4) A board of education shall, on or before May 1 in each year, notify its employees and the boards of trustees, and publish information for parents and pupils, with respect to opening and closing dates of schools in the division for the following school year.

- 165(1) Subject to subsections (2), (3), and (4), the program of instruction in schools shall be conducted between 9:00 a.m. and 12:00 noon and between 1:00 p.m. and 3:30 p.m. on each school day.

(2) The minister may, on receipt of a request from a board of education, authorize the board to conduct classes or other educational activities during periods of each school day other than the periods mentioned in subsection (1).

(3) The board of education may alter or shorten, by not more than 30 minutes, the school hours prescribed by subsection (1).

(4) The board of education may, with the approval of the minister, alter by more than 30 minutes the school hours prescribed by subsection (1).

- 175 Subject to the stated policies of the board of education and to the regulations, a principal, under the supervision of the director or superintendent, shall be responsible for the general organization, administration and supervision of the school, its program and professional staff and for administrative functions which pertain to liaison between the school and the board and its officials and, without restricting the generality of the foregoing, the principal shall:
  - (d) exercise supervision over the work of all members of his staff;
  - (e) provide leadership for enhancement of the professional development of his staff;
  - (g) conduct, in co-operation with his staff, a continuing program of planning and evaluation with respect to the objectives, curriculum, pedagogy and effectiveness of the instructional program of the school;
  - (j) establish in consultation with his staff, the procedures and standards to be applied in evaluation of the progress of pupils and in making promotions.

- 176(1) Subject to subsection (2), the basic program of studies and the courses of study used in a school shall be consistent with the regulations and with such directives as the minister may issue.

(2) A board of education may, with the approval of the minister, authorize the implementation of a course of study which has been developed within the division for use in any of the schools, and such course may be recognized for credit purposes in accordance with the regulations.

- 177 Subject to the regulations, the program of studies provided in a school shall be that approved by the board of education in conjunction with the principal on the recommendations of the director or superintendent.

- 180(1) Subject to subsections (2) and (3), English shall be the language of instruction in schools.

- 181(1) Religious instruction, as authorized by the board of education of a school district, or by the board of education of a division which is not divided into school districts, with respect to any of the schools in its jurisdiction, may be given in that district or division, as the case may be, for a period not exceeding two and one-half hours per week.

  (2) Subject to subsection (2.1), a board of trustees, or the board of education in the case of a division that is not divided into districts, may direct that the exercises preceding the regular daily program of instruction of the school be opened by the reading or reciting, without comment or explanation, of the Lord's prayer or a passage of selected Bible readings which have been prescribed for the purpose by the minister.

  (2.1) Where the parents or guardians of a pupil request, the pupil is to be excused from participating in the opening exercises described in subsection (2).

  (3) Where a pupil does not wish to participate in courses of religious instruction authorized pursuant to subsection (1), he shall, with the written consent of his parent or guardian, be exempt from attendance at such courses of religious instruction, but shall be provided with suitable alternative studies appropriate to the instructional program of his grade or year.

- 227 A teacher shall be responsible, in co-operation with staff colleagues and administrative authorities, for the advancement of the educational standards and efficiency of the school, participation in educational planning by the staff and the board of education, and the regular advancement of personal professional competence and, without restricting the generality of the foregoing, the teacher shall:
  - (b) plan and organize the learning activities of the class with due regard for individual differences and needs of the pupils.

- 361(2) Subject to the regulations, every registered independent school shall be subject to any inspection that the minister considers necessary.

In other words, the Minister has the duty to prescribe the goals of education and the courses of instruction for public schools and to provide curriculum guides and lists of textbooks, apparatus, equipment and other materials corresponding to the prescribed courses. He may authorize textbooks for the use of pupils and teachers in all schools; prescribe the subjects of instruction; and define compulsory and optional subjects and course requirements for completion of a grade or year of study.

Public boards of education have the duty to authorize and approve the courses of instruction for their schools which are consistent with the regulations and with such directives as the minister may issue. They may approve textbooks, reference books and library materials for use in their schools, and they may, with the approval of the minister, authorize the implementation of a for-credit course of study which has been developed within the division for use in any of its schools.

Public boards of education shall appoint a director of education, designated as their chief executive officer, who, among other things, shall exercise general supervision of the schools and the work of principals, teachers, and other personnel employed by the board. The Minister may also appoint a superintendent with powers of supervision for any area of the province designated by the Minister, and may make provision for the inspection of registered independent schools.

During his presentation to the Advisory Board, Fred Renihan explained that the Department of Education was presently in the middle of a major curriculum reform, starting with the establishment of the Curriculum and Instruction Review Committee in 1981; followed by the *Directions* Report in 1984, which recommended, among other things, a new statement of the goals of education for Saskatchewan[1] and the development of a core curriculum spanning kindergarten to Grade 12; the establishment of the Core Curriculum Policy Advisory Committee in 1985; and the publication of *Core Curriculum Plans for Implementation* in 1987, which contained the policy directions for the Core Curriculum.

The essential concept behind Core Curriculum was that curriculum for each grade level and course of study should be planned with the entire educational experience in mind. Saskatchewan's Core Curriculum contained four major components, as well as specifying time and credit allocations for each of three levels of schooling:

- *Required Areas of Study*: language arts, mathematics, science, social studies, health education, arts education, and physical education.

- *Common Essential Learnings*, which would be incorporated into the required areas of study and other courses of study in an appropriate manner: communication, numeracy, critical and creative thinking, technological literacy, independent learning, and personal and social values and skills.

- *Locally-Determined Options*, which allowed time for local or community program priorities, as determined by local boards of education, and which could be provided by utilizing provincially developed courses or by implementing courses developed at the local level. At the elementary and middle levels, time for locally-determined options may be gained by reducing the required areas of study by no more than 20% in any area. At the secondary level, time for locally-determined options is available through the use of credits in the elective categories.

- *Adaptive Dimension*, which provided flexibility within the school program to enable schools and teachers to individualize instruction in order to meet the variety of students' needs.

- *Time and Credit Allocations*, for each of the three levels of schooling: elementary level (grades 1 to 5), middle level (grades 6 to 9), and secondary level (grades 10 to 12).[2]

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[1] See Table 6.1.

[2] See Tables 6.2 to 6.4.

Fred Renihan further explained that the Department of Education would be implementing the Core Curriculum gradually over the next decade. For developing new curricula, the Department had established five guiding principles:

- Society has institutionalized in the school the responsibility for advancing the intellectual development of children. No other institution is given this mandate as its major purpose.
- The primary purpose of schooling is to develop the knowledge and skills that society holds important to sustain its cultural, epistemological, and scientific traditions and to ensure their continued development.
- For the purpose of curriculum development, the systematizing of knowledge should occur through the disciplines of that tradition -- language, mathematics, science, history, and the arts.
- Curriculum must sustain both the core bodies of knowledge upon which the disciplines are founded and the principles by which the disciplines generate new knowledge.
- Curriculum must focus on simultaneously developing student abilities in observing, defining, analyzing, researching, synthesizing, and evaluating -- all those skills associated with acquiring knowledge.

While the Department anticipated that boards of education would meet the program needs of most students through the selection of provincially developed course offerings, where a board of education perceived a need at the local level for new courses beyond this, then it could also submit courses to the Department for approval as locally-developed courses in accordance with established policies and procedures.[3] This option allowed for individual differences in a diversified student population, while the approval process ensured that all students would have the opportunity for continuous progress. Locally developed courses could include up to 100 percent original content. Students could use locally-developed courses to meet the Required Courses of Study, the Specified Areas of Study, or the Unspecified Elective requirements for secondary level standing,[4] but the province's two universities did not presently accept locally developed courses in place of required subjects for admission to any school or college of the universities. They evaluated the acceptability of locally-developed courses as electives or in place of 30 level pre-requisites on an individual basis.

Finally, provincial curriculum policy provided for *alternative* education, which, in the Saskatchewan context, referred to a locally-developed program designed to meet the unique and specific needs of an individual or group or individuals who required a qualitatively different educational experience which could not be met through the Adaptive Dimension of Core Curriculum. This included both disabled students and students who were "at risk" of not being able to achieve their potential via the options and/or modifications offered within regular education programs.[5] Alternative education programs generally required qualitatively different instruction and facilities.

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[3] See Saskatchewan Education, *Policies and Procedures: Locally Developed and Modified Courses of Study* (September 1989).

[4] See Table 6.4.

Contrasting Saskatchewan's curriculum reform with that of other provinces, one commentator has described Saskatchewan's approach to reform as "an effort that could serve as a model for all of North America":

> Saskatchewan's model of curriculum reform is an excellent example of the process of collaborative decision making. This approach has been the hallmark of Saskatchewan's educational system for many years. Education policy has been formulated through extensive consultations with the organizations and institutions connected to schools and teaching.
>
> Saskatchewan is leading the way in education reform in Canada not only in *what* is being developed but also in *how* it is being developed. Collaboration, sufficient time for implementation, and meaningful inservice training for the province's 12,000 teachers have been the keys to successful reform in Saskatchewan.[6]

Legislation and Regulations with Respect to Independent Schools in Other Provinces

As previously discussed, the Secretariat to the Board reviewed legislation and regulations pertaining to curriculum, instruction, and evaluation in independent schools in six other provinces.

School Year and Day

Ontario requires independent schools to operate between 9 a.m. and 4 p.m. on school days within the school year. In other provinces, however, requirements to operate a certain number of days per year, hours per year, or hours per day generally arise tangentially as a result of *accreditation* or *funding* requirements with respect to curriculum.

Accreditation requirements in British Columbia, Alberta, and Ontario require secondary schools to operate, in effect, at least the same number of days or hours as public schools.

Provincial funding in Manitoba is pro-rationed in accordance with the number of days that the school is open in comparison with the public schools.

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[5] See pages 146 and 147 below for a more complete discussion of the categories of disabled students under *The Education Regulations*, section 49, and for types of students whose education is "at risk".

[6] Tom McConaghy, "Curriculum Reform in Saskatchewan", *Phi Delta Kappa* (February 1990), p. 496.

Goals of Education

British Columbia's *Independent School Act* specifically requires that independent schools shall not conduct programs that

> would, in theory or in practice, promote or foster doctrines of
> (i) racial or ethnic superiority or persecution,
> (ii) religious intolerance or persecution,
> (iii) social change through violent action, or
> (iv) sedition.

Otherwise, British Columbia states that *registered* schools "are not obligated to use curricula consistent with the provincial curriculum common goals".

Alberta's *School Act* requires *registered* private schools to provide programs of instruction that comply with the *Goals of Basic Education for Alberta*. Alberta's *School Act*, clause 25(1)(c), also authorizes the Minister, "subject to the rights of a board of education to provide religious instruction, [to] prohibit the use of a course, educational program or instructional material in schools", which provision applies to all schools, including registered private schools.

None of the other four provinces reviewed have any legislative or regulatory requirements with respect to the goals of education in independent schools.

Curriculum and Evaluation of Students

All six provinces generally require independent schools to provide the provincial Department of Education with information concerning the curriculum and program of studies that they are using. Other than this, however, no province has any legislative or regulatory requirements with respect to the curriculum or program of studies in *registered* or *listed* independent schools. For example, Alberta's private school regulations simply require a private school, at time of application for registration, to submit "a proposed list of subjects to be taught and an outline of the major skills and knowledge areas to be learned".

With respect to *accredited* and *funded* schools, however, the situation is different.

In British Columbia, in the case of *accredited* schools, the Inspector of Independent Schools must be further satisfied that

> (a) the independent school will establish an educational program for the current school year that complies with the instructional time and program requirements determined by the minister; and
> (b) the independent school has established an evaluation program that
> (i) demonstrates student progress in achieving intellectual development, human and social development and career development, and
> (ii) includes provincial assessment and examination programs.

This means that the accredited schools are expected to meet all the provincial curriculum goals and allocate at least 80 percent of their instructional time to the core subjects: English, social studies, mathematics, and science. In addition, in Grades 11 and 12, they must offer a program that will lead to graduation from Grade 12. Like students in public schools, all students in accredited independent schools must sit the government examinations in the Grade 12 examinable subjects during the government examination periods, which examinations count for 40 percent of their final mark.

British Columbia's Roman Catholic schools generally follow the provincially-prescribed curriculum. The Christian Schools International (CSI) schools and the Seventh-day Adventist (SDA) schools have developed and use their own curricula in some subject areas which the Department has evaluated and determined to be equivalent to provincial curricula.

All accredited schools are required to participate in the provincial assessment programs, which are designed to test the effectiveness of the curriculum in achieving the goals of the curriculum. This includes schools that are not specifically using the provincial curriculum.

In Alberta, a private school is entitled to be *accredited* if "the Minister approves the education program and any modification of it offered at the school". In approving curricula, the Department looks for equivalency of the curriculum to that of the public schools. As in British Columbia, the ACSI, CSI, and SDA accredited schools have developed their own curricula, parallel to the provincial curriculum, which are regarded as equivalent to the public education curriculum. Some schools with a supplemented ACE curriculum are also accredited in Alberta.

Accredited schools in Alberta must also "develop and maintain policies regarding the evaluation of students, teachers, programs and the school consistent with those of the Minister." All students (in both public and private schools) who desire to graduate from high school with Grade 12 standing must write the provincial grade 12 examinations, which account for 50 percent of their final mark.

In Manitoba, accreditation is implicit in funding. To be eligible to receive provincial grants, the Minister must be satisfied that "the private school teaches sufficient number of courses approved under *The Education Administration Act* to ensure that children enrolled in the private school receive an education of a standard equivalent to that received by children in public schools." As in Alberta, the Manitoba Department of Education looks for equivalency of the curriculum to that of the public schools. Schools must agree to and seen to be striving to meet Manitoba's goals of learning and curriculum guidelines as outlined in the Department's Administrative Handbook.

Ontario appears to be the most restrictive province with respect to secondary level accreditation of an independent school. Criteria require schools to conform to provincial curriculum guidelines, with only a minimal amount of room to substitute equivalent curricula in Grades 9 to 12, while schools must use the Ontario Academic Courses (the former Grade 13) in order for their students to receive a diploma acceptable for admission into university.

Inspection, Evaluation, and Supervision of Independent Schools

British Columbia and Alberta distinguish between inspections and evaluations of independent school programs. An inspection is a visit by one person, usually a department official, for one day or less, who would check, for instance, that a *registered* school had facilities that "comply with the enactments of British Columbia and the municipality or regional district in which the facilities are located", or that an *accredited* school met the time requirements for the core subjects.

An evaluation involves a team of several members, often under contract, that might visit an *accredited* school for two or three days, evaluating the entire academic program of the school in order to assess its equivalency to that of the public schools.

Ontario also makes a distinction between two different kinds of inspections, along similar lines: (1) the initial inspection upon receipt of a notice of intention to operate a private school, in order to determine that the school meets the definition of a private school under *The Education Act*, and (2) a subsequent inspection in respect of the standard of instruction for high school diploma purposes, i.e. secondary level accreditation.

Of the various provinces, only British Columbia appears to have laid down province-wide criteria for inspections and evaluations, both in terms of content and regularity.

Apparently no province requires Departmental supervision of independent schools, as the term "supervision" is understood in Saskatchewan.[7]

Questions, Discussions, Recommendations, and Understandings

Question (B.1)

What regulations should there be with respect to the days and hours of operation of independent schools?

Discussion

The curriculum, instruction, and evaluation committee began its discussion of this question by reviewing existing legislation, policies, and procedures with respect to public schools in Saskatchewan, deriving from *The Education Act*, sections 164 to 168.[8]

The Education Act specifies the school year as 200 days in length, but also gives the Minister the authority to specify a lesser number of days. In consultation with the SSTA, the STF, and LEADS, the Minister has specified the school year as 197 days for the past few years.

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[7] See pages 125-127 below for a more complete discussion of the term "supervision" as it is understood in Saskatchewan.

[8] See, also, Saskatchewan Education, *Report of the Minister's Advisory Committee on The School Year/School Day* (September 1985).

While the legislation does not distinguish between the teacher year and the student year, in practice, the school year has come to mean the number of days that teachers are employed, and therefore includes not only instructional days, but also days for preparation and wind-up activities at the beginning and end of each school year, teacher in-service, parent-teacher conferences, and student evaluation.

Boards of education determine the number of student days, including instruction, evaluation, and field trips, which varies from one part of the province to another, but is generally about 10 days less than the number of teacher days.

The Education Act specifies the school day as 5 1/2 hours in length from 9:00 a.m. to 12:00 noon and 1:00 p.m. to 3:30 p.m. However, boards of education may alter or shorten these school hours by up to 30 minutes without the approval of the Minister, and by more than 30 minutes with the approval of the Minister.

The curriculum committee agreed and the Board subsequently concurred that all independent schools should operate full-time programs consistent with those of the public schools and the historical high schools. That the government would require independent schools to operate a full-time program was not a question of conscience; it was a question of defining a "registered independent school", which requirement would therefore exclude short-term programs such as vacation Bible schools, or "after hours" programs such as private tutorials that supplemented instruction to children enroled in a regular school program.

Most of the committee's deliberations focused on the implementation of this principle.

On the one hand, the government could not legitimately impose more restrictive requirements on independent schools than it did on public schools, and independent schools did not require more flexibility than was already provided in sections 164 to 168 of *The Education Act*, which already provided considerable flexibility to boards of education in respect of their days and hours of operation, as well as provision to obtain ministerial approval for deviations from the provincial norm.

On the other hand, there was some concern that sections 164 to 168 might provide independent school boards with *too much* flexibility. In particular, registered schools that were not subject to funding or curriculum constraints could, according to the *letter* of subsection 164(3), choose to operate for, say, only 100 student days. The Department might, in effect, end up registering schools that were not operating full-time programs.

Hence, without getting into details, the committee recommended that the Department develop policies to ensure that all independent schools do in fact operate full-time programs consistent with the *spirit* of sections 164 to 168.

Recommendations

(B.1.1) *That each independent school must operate a full-time program.*

(B.1.2) *That each independent school operate an educational program in which the days and hours of operation accord with sections 164 to 168 of The Education Act.*

(B.1.3) *That in respect of sections 164 to 168 of The Education Act, each independent school board be granted the same powers as public boards of education.*

Understandings

The Department will subsequently develop appropriate policies and procedures to ensure that all independent schools are operating full-time programs consistent with the *spirit* of sections 164 to 168.

Question (B.2)

What accommodations, if any, need to be made for independent schools who cannot accept Saskatchewan's goals of education, in part or in total?

Discussion

At the second and third meetings of the Board in November and December 1989, each of the organizations represented on the Board made a presentation to the full Board with respect to (1) their organization's goals and philosophy; (2) their membership and operation; (3) how they perceived their role in Saskatchewan education; and (4) their views on public and independent schools.

During their presentations, the representatives of independent schools, while discussing the goals of their organizations, also discussed the goals of education for the schools that they represented.[9]

While the historical high schools felt that they had played a meaningful role in the most recent formulation of the *Goals of Education for Saskatchewan*[10] and were comfortable with these goals, representatives of the other four groups of independent schools felt that they had not been part of this process and were concerned about some aspects of these goals.

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[9] See Appendices 17, 18, 19, 20, 21 for a discussion of the goals of education for the historical high schools, the independent church schools, the Adventist schools, the Church of God in Christ (Mennonite) schools, and the Society schools, respectively.

[10] See Table 6.1.

The goals of any school or educational system reflected the underlying philosophy of that school or system, and a school's choice of curriculum and recruitment of teachers reflected, in turn, its goals of education. The *Goals of Education for Saskatchewan*, themselves, did not align with a philosophy that there were absolutes in truth and right; that men and women were by nature sinners and in need of a Saviour; or that Christian beliefs should be rooted and grounded in the Word of God as revealed in the Bible, and not in the changing opinions of society. Conspicuous by its absence in the *Goals* was a reference to the family as an important institution in society, or an appreciation for tradition. "Growing with Change", which encouraged students to accept change as a fact of life, could actually be detrimental, in some circumstances, to the overall well-being of society.

Parents who had started independent schools in the late 1970s and early 1980s believed strongly that the school was the extension of the home. They had not been looking for help with religious instruction, but had become frustrated with dealing with more and more influences in the schools that, in their opinion, worked against what they were trying to do in the home. They were the philosophical descendants of the British non-conformists like John Bunyan. To insist that all independent schools affirm in some way that they subscribed to the *Goals*, whatever a particular independent school really believed, was unnecessary, would probably conflict with guiding principles #2, #6, and #10, and was like the Anglican uniformists' insistence that all British citizens conform to the religious practices of the Anglican church in 1660, whatever the non-conformists really believed.

The public education representatives and the historical high schools responded that the *Goals of Education for Saskatchewan* had been developed by using a broadly-based consultative process which included the parents of children in independent schools. These goals were designed specifically to be inclusive, not exclusive -- to encompass all legitimate perspectives in our pluralistic and multicultural society, including Christianity.

The *Goals of Education for Saskatchewan* were goals of education, not goals of schooling. It was understood that public boards of education had the freedom to add to these goals and to define responsibility for their achievement among the school, the home, the church, and the community. This definition differed among public boards of education. Likewise, independent schools had the same freedom to augment these goals and to determine how they could best be achieved. However, a common set of goals was needed in order to provide a common sense of direction for our society, while affording sufficient latitude to accommodate the aspirations of all parents for their children.

The Board searched for recommendations that would both safeguard the public interest in education and preserve the individual conscience of independent schools. The independent school representatives were encouraged that the public education representatives took a broad view of the *Goals of Education for Saskatchewan*, but could they be assured that, down the road, the future administrators of independent school policies would take a similar broad view? Recommendations (B.2.3) and (B.2.4) below provide an explicit conscience clause and underline this broad interpretation.

Recommendations

(B.2.1) *That each registered independent school must have goals that are not inconsistent with the Goals of Education for Saskatchewan.*

(B.2.2) *That each accredited independent school must subscribe to the Goals of Education for Saskatchewan.*

(B.2.3) *Subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, that recommendations (B.2.1) and (B.2.2) are not intended to diminish or to infringe upon the religious conscience of any independent school.*

(B.2.4) *That each independent school has the freedom to add to these goals and to define responsibility for their achievement among the school, the home, the church, and the community.*

Understandings

Unless otherwise stated, in these and subsequent recommendations, the term "accredited schools" refers to all three categories of accredited schools combined: the accredited schools *per se*, the historical high schools, and the alternative schools.

The phrase "among the school, the home, the church, and the community" is taken from the similar phrase in the preamble to the *Goals of Education for Saskatchewan*, which implicitly recognizes that the goals of education are not synonymous with the goals of schooling. Both public and independent schools have the freedom expressed in recommendation (B.2.4). For instance, some independent schools might assign topics such as family life education to the home, the church, or the community.

The Department will develop appropriate policies and procedures for implementing these recommendations with respect to the goals of education.

In the future, independent schools will be involved, as a group, in any reformulation of the goals of education for Saskatchewan. See recommendation (B.3.8).

Question (B.3)

What accommodations, if any, need to be made for independent schools who cannot accept specific Saskatchewan government curricula, in part or in total (e.g. Division III health or Grade 8 social studies)?

(a) What process will be developed for approval of curricula in independent schools?

(b) What criteria will be developed for approval of curricula in independent schools?

Discussion

Not unexpectedly, this was one of the most important issues that the Advisory Board considered, although, as it turned out, not a particularly contentious issue.

Representatives of the newly established independent schools expressed concerns in three areas: the underlying philosophy of public educational curricula; terminology such as "provincial curriculum" and "Core Curriculum"; and the lack of a mechanism in the Department to evaluate independent schools' courses and programs.

To these independent school representatives (leaving aside the historical high schools), the most important question with respect to any curriculum was "what was its philosophical base?" While most educators would agree that, at some point in Canadian history, the Christian philosophy of education had predominated in the public schools, there was less agreement on what was the philosophy of public school curricula today.[11]

Evangelical Christians, themselves, who had started independent Christian schools in the late 1970s and early 1980s, believed that they had found increasing evidence of secular humanistic philosophy, as set forth in the *Humanist Manifestos I and II*,[12] in the provincial health curriculum, in English readers, English literature, and social studies -- the very subjects most closely related to the transmission of cultural traditions. The establishment of independent schools in Saskatchewan was part of a North American trend in response to such real, not just perceived changes in the underlying philosophy of public school curricula. That a number of Christian publishers had emerged to meet the demand for specifically Christian curricula was evidence of these changes.[13]

If Saskatchewan's independent schools were going to be required to follow the provincial curriculum, what exactly did this mean? If they had to abide by "Core Curriculum", what did this mean? Did it give independent schools the freedom to substitute Christian curricula for provincially developed curricula in their educational programs? On the face of it, Core Curriculum appeared to be primarily a curriculum structure. New curricula in the required areas of study, which incorporated the common essential learnings, were only now being developed. Without concrete answers to these questions, independent schools were concerned about writing a blank cheque for the future, that might come back to haunt them.

One of the biggest frustrations of Saskatchewan's independent schools had been the lack of a mechanism in the Department of Education to evaluate their educational courses and programs for comparability with or equivalency to the public school curricula. Critics of independent schools had condemned such curricula simply because these were not provincially approved. But, on the other hand, there had been no mechanism in place to approve them, or even consider approving them. Hundreds of parents were now spending thousands of dollars to educate their children in the most recent generation of independent schools, using "unapproved" curricula. Surely this warranted at least looking at these new curricula.

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[11] See Appendices 23 and 25 for references to some professional opinions on the philosophy of public school curricula today.

[12] *Humanist Manifestos I and II* (Prometheus Books: 1973). The *Humanist Manifesto I* first appeared in *The New Humanist* (May/June 1933), and the *Humanist Manifesto II* in *The Humanist* (September/October 1973).

[13] See Appendix 13 for a list of Christian curricula presently being used in Saskatchewan's independent schools. Most of these publishers now have Canadian distributors or affiliates.

The public education representatives on the Board did not deny that public school curricula had changed significantly in the last twenty years in response to an increasingly pluralistic and multicultural society. But it was unfair to characterize the public school curriculum as "un-Christian". Teachers in public schools (leaving aside the separate schools) were under some obligation to present alternative value systems to students who came from a wide range of backgrounds.

Yes, one had to distinguish the provincial curriculum *per se* from specific programs, textbooks, and resource materials that particular boards of education and teachers had chosen to implement the provincial curriculum. Core Curriculum, like the previous provincial curriculum, was indeed a flexible curriculum structure, within which both public and independent schools had much freedom to choose their own programs, textbooks, and resource materials. Therefore, independent schools should be able to abide by Core Curriculum without sacrificing their conscience.

Also, the Department of Education should put in place mechanisms to evaluate independent school courses and program for comparability with or equivalency to public education courses and programs.

In the light of these discussions, the curriculum, instruction, and evaluation committee, during two meetings on March 8 and 12, 1990, formulated the substance of the following recommendations, with which the Board, with a few modifications, subsequently concurred.

First, the following recommendations define a *registered* independent school in the generic sense, as a school that provides instruction in the seven required areas of study, appropriate for the age and ability of the students, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy. This therefore excludes schools that offer solely religious instruction, solely language instruction, solely a program of social or cultural activities, or solely a program of recreational or athletic activities. That a school should be required to provide instruction in these required areas of study is not a question of conscience so long as the school has the freedom to choose which courses or programs to teach in these required areas.

Second, the recommendations define an *accredited* independent school as one that conforms to provincial curriculum policy in respect of the required areas of study, the common essential learnings, locally-determined options, the adaptive dimension, and the time and credit allocations. If the Department is going to sanction a certain school program as *accredited*, then the Department can rightfully expect the school to conform to provincial curriculum policy. This does not represent a change for the historical high schools.

Third, the recommendations provide mechanisms for *registered* independent schools to become *accredited* over time without sacrificing their conscience. In conforming to provincial curriculum policy, the accredited schools *per se* and the historical high schools must teach courses and programs that have been approved by the Department, either:

- provincially developed courses and programs;
- locally developed courses, designated 10L, 20L, and 30L;
- regular courses, designated 10I, 20I, and 30I, developed by the independent schools themselves and submitted to the Department for approval; or
- programs at the elementary and middle levels approved by the Department's supervisory official for independent schools.

Like public schools, accredited schools may approve locally-determined options at the elementary and middle levels up to 20 percent of the time allocation. At the secondary level, time for locally-determined options is available through the use of credits in the elective categories.

Fourth, the recommendations distinguish *alternative* schools as schools that conform to provincial curriculum policy in respect of alternative education. Provincial policy in respect of alternative education is presently under development.

Fifth, if accredited independent schools are going to be required to conform to provincial curriculum policy, and if registered schools are going to be encouraged to become accredited over time, then the Minister should consider representation from independent schools on structures like the K-12 Education Program Policies Advisory Committee, which is the committee that reviews and recommends changes to the Minister with respect to provincial curriculum policy. Also, if independent schools are now to be recognized as an integral part of the Saskatchewan education scene, such a recommendation simply makes sense on its own merits.

Recommendations

(B.3.1) *That each registered independent school must provide instruction in the required areas of study -- language arts, mathematics, science, social studies, health education, arts education, and physical education -- appropriate for the age and ability of its pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy.*

(B.3.2) *That each accredited independent school per se or historical high school must conform to provincial curriculum policy in respect of*

- *required areas of study*
- *common essential learnings*
- *locally-determined options*
- *adaptive dimension*
- *time and credit allocations*

as outlined in Core Curriculum Plans for Implementation (Saskatchewan Education, December 1987).

(B.3.3) *That each alternative independent school must conform to provincial curriculum policy in respect of alternative education.*

(B.3.4) *That an independent school board, like public boards of education, may submit courses to the Department for approval as locally developed courses, designated 10L, 20L, and 30L. Such courses must be taught by certified teachers for students to receive secondary level credit.*

(B.3.5) *That an independent school board may submit courses to the Department for approval as regular courses originating from independent schools, designated 10I, 20I, and 30I. Such courses shall*

- *be academically equivalent to provincial courses designated 10, 20, 30;*
- *follow the same process of approval as for locally developed courses;*
- *reflect the religious or philosophical base of the independent school; and*
- *be taught by a certified teacher for students to receive secondary level credit.*

(B.3.6) *That an independent school board may submit programs at the elementary and middle levels for approval to the Department's supervisory official for independent schools.*

(B.3.7) *That section 180 of The Education Act apply to independent schools in respect of the language of instruction in each independent school.*

(B.3.8) *That the Minister consider representation from independent schools on the K-12 Education Program Policies Advisory Committee (EPPAC), within the present structure and composition of EPPAC.*

Understandings

Registered independent school boards have the authority to approve their own courses and programs in the seven required areas of study. The phraseology in recommendation (B.3.1), "comparable in quality to that of the public schools", and "consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy" comes from principles #7 and #8 in Chapter III, which in turn come from the Minister's letter of invitation to organizations represented on the Board to name their representatives to the Board. The Department will subsequently develop appropriate policies and procedures in order to enforce this recommendation.

Curriculum policy does not deal with the approval of specific courses or programs as such. Conforming to provincial curriculum policy still permits accredited schools to select particular approved courses and programs at all levels.

Regular courses designated 10I, 20I, and 30I will cover essentially the same content as regular courses, designated by 10, 20, and 30, but from a Christian philosophical point of view, or from some other philosophical point of view associated with a different kind of independent school, that is not academically destructive of the content of the course. In effect, such courses will have an additional common essential learning, of a religious or philosophical nature, embedded in the course.

The Department's supervisory official for independent schools will perform the function of the regional director with respect to the approval of both locally developed courses and 10I, 20I, and 30I courses submitted to the Department for approval. No independent school can have more than one 10I, 20I, or 30I course approved in each subject, say, English A30I or Social Studies 30I.

To the extent that the criteria for approval of locally-developed courses are not written down on paper, the Department should be expected to write these down so that independent schools can know what criteria they have to meet in order to get courses approved.

Either registered or accredited schools may submit courses or programs for approval by the Department or the Department's supervisory official for independent schools. However, students will only receive secondary level credit for courses taught by a certified teacher.

By way of example, elementary and middle level accredited schools have the freedom to teach social studies from predominantly a historical and geographical perspective, or family life education from a Christian perspective.

A particular independent school can be registered at the elementary and middle levels and accredited at the secondary level.

The Minister would appoint representation on EPPAC from among the Minister's own component on EPPAC. Such representation would include input into various ongoing curriculum and instruction programs, including evaluation and assessment programs. It would also include input into any future reformulation of the goals of education for Saskatchewan.

Question (B.4)

What accommodations, if any, need to be made for independent schools with respect to programs, textbooks, and other resource materials?

Discussion

The curriculum, instruction, and evaluation committee began its consideration of this question by discussing the terms curriculum, course, program, textbook, and resource material. The Department now used the term program more or less synonymously with the term course, in relation to a program or course of studies. In answering the previous question, the committee had further associated the word "course" with the secondary level (grades 10 to 12) and the term "program" with the elementary and middle levels (grades 1 to 5, and 6 to 9, respectively). Consequently, the committee decided to eschew the term "program", and to talk specifically in terms of textbooks and resource materials in addressing this question.

Then the committee discussed the Department's recommended materials list for public schools and the procedures for getting materials onto this list. First, a director, principal, or teacher may suggest an addition to the recommended list. Second, the Department orders the book or material from the publisher. Third, the Department screens the book or material internally for accuracy of information and for offensive material such as racism, sexism, and ageism. Fourth, if the book or material passes this internal screening, the Department sends the book or material to at least four teachers for their evaluation. The Department will only add the book or material to the recommended list if all four teachers express a positive consensus with respect to the value of the book or material.

The committee concluded that certain materials, while academically credible and suitable for independent schools, would be too overtly Christian to put on the recommended list for public schools. Furthermore, books and materials for independent schools should appropriately be evaluated by teachers in independent schools, not by teachers in public schools. But, having not been evaluated by teachers in public schools, they could not appear on the recommended list for public schools.

The best solution was for the Department to develop and to maintain a recommended list for independent schools, like it used to maintain such a list for separate schools.

Recommendation

(B.4) *That the Department develop and maintain a recommended materials list for independent schools.*

Understandings

The Independent Schools Branch and the Curriculum and Evaluation Division of the Department will jointly co-ordinate the development and maintenance of this recommended materials list. Such materials will generally be evaluated by certified teachers in independent schools.

Even with respect to the public schools, some parents who have their children in independent elementary schools have found the recommended materials list, say, for high schools not to be truly representative of the philosophical diversity in our society. The Department should also consider broadening the recommended materials list for the public schools to make it more representative.

Question (B.5)

What accommodations, if any, need to be made for independent schools with respect to religious education in independent schools?

Discussion

This question was basically here in case the answers to the previous questions were not sufficiently sensitive to those independent schools who felt that religious education could not be separated from general education and who desired to use a curriculum in which the two were totally integrated. In general, the curriculum committee felt and the Board subsequently concurred that the recommendations with respect to questions (B.2), (B.3), and (B.4) were sufficiently sensitive to this concern. Independent schools did have the freedom to incorporate their philosophy throughout the teaching of academics much like an additional common essential learning.

However, the public education representatives expressed concern that some independent schools might become glorified Sunday Schools with little academic education taking place in these schools. Therefore, it was agreed that subsection 181(1) of *The Education Act* should apply to independent schools in respect of non-credit religious instruction in the religious doctrine or creed of the parent organization operating the independent school.

Recommendation

(B.5) *That subsection 181(1) of The Education Act apply to independent schools in respect of non-credit religious instruction in the religious doctrine or creed of the organization that owns or operates each independent school.*

Understandings

This recommendation is consistent with recommendations (B.3.1) and (B.3.2). Independent schools are academic programs, not Sunday Schools. An independent school still has the freedom to increase the amount of religious instruction beyond 2 1/2 hours per week by increasing the school day to more than 5 1/2 hours per day. Credit courses like Christian Ethics 10, 20, and 30 are not restricted by this 2 1/2 hour limit.

Question (B.6)

What methods of accountability should be put in place to ensure adequate instruction in independent schools?

Discussion

During their presentations at the second and third meetings of the Board in November and December 1989, each of the independent school groups discussed their schools' accountability and relationships to larger organizations.

The historical high schools had been accountable to provincial superintendents in respect of accreditation and funding -- both before 1971, to the educational chief executive officers of local school divisions who were then provincial superintendents, and after 1971, to provincial superintendents of private schools -- until the early 1980s when the last superintendents of private schools had retired. Since that time, each school had made arrangements for supervision, either with a local board of education or with a retired director or superintendent of education.

The Saskatchewan Association of Private High Schools was a member of the Federation of Independent Schools of Canada (FISC), Don King being the current President of FISC.

While the other four groups of independent schools had not been accountable to the Department of Education up until now, representatives of these four groups stressed that they were accountable to and/or associated with various non-governmental bodies and associations.

SAICS had an active membership of 18 evangelical churches, each of which operated a church school as an integral part of its church ministry, and that were affiliated with several evangelical denominations. Each school was therefore accountable to its local church body and to its denomination. Members had to subscribe to the aims and objectives of SAICS; could use curricula other than Accelerated Christian Education (ACE); but had to be a church school, not a society school. At the present time, however, all members did utilize the ACE curriculum.

SAICS was a voluntary association, not an accreditation body. There was no authority relationship between SAICS, ACE, and the member churches. Accelerated Christian Education, Inc., was a publisher of educational materials. It provided a self-paced, competency-based academic curriculum, specifically designed for evangelical church schools, whether large or small. Each member of SAICS had a contractual relationship with ACE, as opposed to a franchise relationship.

While the ACE curriculum had been developed primarily in the United States, it was wrong to think of it as an American curriculum. Rather, it was an international and a Christian curriculum that was now being used in over 6,000 schools in 92 countries. Christianity, being a universal religion, transcended national boundaries.

Church schools using the ACE curriculum could and generally did partake of the extra services that ACE provided, such as teacher in-service, teacher conventions, administrator's conferences, school visits, and the regional and international student convention programs. Each year, first and second place winners in the Prairie Regional Convention competed in the International Student Leadership Convention, where about 4,000 students from around the world competed in 129 events -- in music, speech, art, athletics, academics, and various skills, as well as numerous aspects of ministry.

Like the Saskatchewan Association of Private High Schools, SAICS was also a member of FISC.

Saskatchewan's Seventh-day Adventist schools were part of the largest Protestant educational system in the world (and the second largest parochial educational system after the Roman Catholics), representing, worldwide, 4,301 elementary schools, 775 secondary schools, 35 work-training schools, and 83 colleges and universities. In Canada, there were 86 elementary schools, 8 secondary schools, and one accredited college -- Canadian Union College in Lacombe, Alberta. The Seventh-day Adventist schools were also members of FISC.

Local Seventh-day Adventist churches that had decided to operate schools chose board members from their own constituents. The boards met on a monthly basis to make board level decisions assisting the principals and teachers in their schools. They could also make recommendations to the local Conference in matters of personnel and development.

Local boards recruited teachers from a pool of prospective teachers (church membership was mandatory), but the local Conference actually hired the teachers. The local Conference and higher levels of administration were responsible for payroll and benefits. The Conference Superintendent provided supervision as well as teacher in-service of 5 to 7 days per school year. National and World headquarters provided sustenance to teachers, upon retirement.

The Saskatchewan churches of the Church of God in Christ (Mennonite) were part of a North American Conference of churches that had decided, in keeping with their historical traditions, to become directly involved, once again, in operating church schools for their children. The five Saskatchewan schools had been the most recent schools to become established in the three Prairie Provinces, after sister schools in Manitoba and Alberta. Each province had its own curriculum committee on which each member school had a representative. The Saskatchewan curriculum committee, which advised member schools with respect to choice of curricula, was a major link between the five Saskatchewan schools.

Each of the three society schools was operated by an inter-denominational society of parents established for the explicit purpose of operating a school. Membership in each society was open to people who were in agreement with the statement of faith and the purposes of the school. From this membership was elected a board of directors to whom the school staff were responsible. Each school also saw and encouraged extensive parental involvement as an important part of the their school operation.

Regina and Saskatoon Christian Schools were part of Christian Schools International (CSI), headquartered in Grand Rapids, Michigan. Heritage Christian School in North Battleford was part of the Association of Christian Schools International (ACSI), headquartered in Whittier, California. Through these connections, their teachers attended conventions and seminars to gain further training and to share ideas.

The society schools wished to co-operate and to co-exist with other schools and to have a good working relationship with the Department of Education. In each case, they had discussed their beginnings with Department officials and had welcomed the visits by the directors and superintendents who had been assigned to visit them from time to time.

In the light of these presentations, both the curriculum, instruction, and evaluation committee and the teacher education, certification, and standards committee discussed the question of accountability in order to ensure adequate instruction in independent schools. During their discussions, they reviewed not only the above presentations, but also Saskatchewan's educational practices and traditions; legislation and regulations in other provinces; and Professor McConnell's presentation on constitutional and legal issues.

The two committees, and subsequently the Board, discussed the terms "inspection", "evaluation", and "supervision" with respect to past and existing practices in the public schools and in other provinces. In the past, school inspection in relation to Saskatchewan's public schools involved checking off minimum criteria on a checklist, and as such, was a time-worn term that no longer reflected in an operational way the work of directors and superintendents of education in Saskatchewan. Consistent with principle #17 in Chapter III, independent schools viewed "inspection" as considerably broader in scope than this. It involved observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of the children in the school. As such, it was concerned with the intellectual as well as the physical well-being of children in independent schools. It could also involve non-directive and unobtrusive supervision.

"Evaluation" could involve a team of several members, visiting a school over a two- or three-day period, evaluating the entire educational program of the school. This was the practice for accredited schools in British Columbia and Alberta, and for accreditation agencies like the Association of Christian Schools International (ACSI). In Saskatchewan, however, team visits were essentially a thing of the past. Among other reasons, evaluation of teachers was viewed as indefensible without prior supervision. Accordingly, present legislation and regulations, with respect to both public schools and the historical high schools, referred to supervision, not evaluation.

"Supervision" was an ongoing process aimed at the improvement of instruction in a school, that included both evaluating and enhancing the performance of teachers, leading to teacher growth, improved instruction, and improved learner outcomes. In Saskatchewan's public schools, in accordance with *The Education Act*, clauses 175(d), (e), and (g), school principals were becoming more and more responsible for supervision, particularly now under Core Curriculum, which viewed the implementation of curriculum as a local school function, because it recognized that local ownership of curricula was important for meaningful long-term development to take place. In the role of supervisor, the principal was concerned not only with curriculum implementation and development, but also with staff cohesiveness, teacher in-service, action research, direct aid (one-on-one with an individual teacher), indirect aid (listening and helping a teacher to identify a problem), and collaboration among the school staff in jointly solving particular problems. A good principal had good interpersonal skills and spent a lot of time looking at what was happening in his/her school.

Consistent with principles #17 and #25 in Chapter III, with freedom of conscience and religion in education, and with the separation of church and state, the Board decided to recommend that the Department be responsible for the *inspection* of registered independent schools and the *supervision* of accredited schools, but with some modifications to the understanding of both these terms relative to past and present practices in Saskatchewan's public schools.

Both Departmental "inspection" and "supervision" involve some authority of the government over independent schools in order to protect the interests of society at large with respect to the education of children in independent schools. The essential distinction is that inspection is more "re-active", while supervision is more "pro-active". Inspection is more "summative", while supervision is more "formative". While inspection involves checking compliance with criteria, the criteria for registered independent schools will be extensive, including, for example, that instruction in the seven required areas of study is "appropriate for the age and ability of its pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy". Inspection could also involve some non-directive and unobtrusive supervision.

In the context of independent schools, neither Departmental "inspection" nor "supervision" would involve responsibility for the recruitment and dismissal of teachers or the selection of programs in independent schools, which would remain the responsibility of the independent school board. Both inspection and supervision would also appreciate and recognize the distinct philosophical orientation of each independent school, and not attempt to make an independent school a mere replica of a public school. In these respects, a provincially employed superintendent of independent schools would play a somewhat different role from a locally employed director of a public board of education.

The historical high schools pointed out that the Department had been supervising their schools since at least the 1960s, until the last provincial superintendents of private schools retired in the early 1980s. Subsequently, each school had made their own arrangements for supervision, either with a local board of education or with a retired director or superintendent of education who met the qualifications of the Department. In general, their schools were happy with their new arrangements. They generally preferred local supervision to Departmental supervision, since local supervision enhanced their contacts with the local public schools in their areas. In line with principle #25, the Board agreed that accredited schools (including the historical high schools) should have the option of arranging for supervision by a local director or superintendent.

Recommendations

(B.6.1) *That the Department be responsible, at the expense of the Department, for the inspection of registered independent schools and for the supervision of accredited independent schools.*

(B.6.2) *Subject to freedom of conscience and religion in education, and to the separate authorities of the church and the state, that "inspection":*
- *(a) involves checking compliance with the criteria for registered independent schools on an ongoing and collaborative basis;*
- *(b) involves observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of the children in the school;*
- *(c) may involve non-directive and unobtrusive supervision;*
- *(d) does not involve responsibility for the recruitment and dismissal of teachers or the selection of programs in an independent school; and*
- *(e) will appreciate and recognize the distinct philosophical orientation of each independent school.*

(B.6.3) *That, in addition to inspection, "supervision" is an ongoing process aimed at the improvement of instruction in a school, but:*
- *(a) does not involve responsibility for the recruitment and dismissal of teachers or the selection of programs in an independent school; and*
- *(b) will appreciate and recognize the distinct philosophical orientation of each independent school.*

(B.6.4) *That, instead of being supervised by the Department, an accredited independent school may, with the approval of the Department, make arrangements for supervision by a local director or superintendent of education, or a person similarly qualified.*

(B.6.5) *That individuals providing inspectorial or supervisory services meet the qualifications of the Department of Education in respect of directors of education as outlined in The Education Regulations, section 5.*

Understandings

The Department's supervisory official for independent schools will be performing many of the duties of a local director of education, except that he/she will be accountable to the Minister, not to independent school boards.

Consistent with *The Education Act*, section 108, the duties of the Department's supervisory official for independent schools will include the following:

- To receive and process forms submitted by independent schools;
- To ensure that independent schools are conducted in accordance with *The Education Act*, as it applies to them, and the independent school regulations;
- To ensure that the principals or directors of independent schools are exercising general supervision of the work of teachers and other personnel in independent schools;
- To provide educational leadership pertaining to the advancement of education in independent schools.

See Table 6.6, **Suggested Responsibilities of the Department's Supervisory Official for Independent Schools**, which so classifies the duties of the Department's supervisory official, arising from other of the Board's recommendations.

Question (B.7)

What procedures should be put in place in order to recognize and/or assess the academic achievement of students in independent schools for purposes of transfer to other schools, secondary level standing, and post-secondary entrance?

Discussion

Both the curriculum, instruction, and evaluation committee and the teacher education, certification, and standards committee discussed this question.

With respect to transfers from an independent school to a public school, public school principals already have the authority in clause 175(j) of *The Education Act* to "establish, in consultation with his staff, the procedures and standards to be applied in the evaluation of the progress of pupils and in making promotions", which includes the authority to place incoming students at their appropriate grade level. At the elementary and middle levels, principals generally rely on indicators such as the age of the student, the grade level in the previous school, and the student's performance on standardized tests such as the Canadian Test of Basic Skills. At the secondary level, principals would also consult the Department's credit transfer guide or the Department directly with respect to placement.

Since independent schools desired to maintain the authority to place incoming students into their own schools, neither the committees nor the Board decided to make any recommendations to modify existing practices with respect to the transfers of students.

With respect to secondary level standing, both the public schools and the historical high schools follow provincial curriculum policy as laid out in Table 6.4. For level 10 and 20 courses (grades 10 and 11), all certified teachers are "accredited" to determine the students' final marks. For level 30 courses (grade 12), certified teachers who are not accredited provide 50 percent of their students' final marks (and the Grade 12 departmental examination the other 50 percent). Accredited teachers determine 100 percent of their students' final marks.

Teachers may become accredited in a particular level 30 subject by meeting specified academic requirements in this subject, by attending an accreditation seminar (jointly sponsored by the Department and the STF), and with the support of their principal, their local director of education, their board of education, and the regional director of education.[14]

In accordance with the preceding recommendations in this chapter, other independent high schools will now have the opportunity to become *accredited* by conforming to provincial curriculum policy and by teaching courses that have been approved by the Department, either:

- provincially developed courses, designated 10, 20, and 30;
- locally developed courses, designated 10L, 20L, and 30L; or
- regular courses, designated 10I, 20I, and 30I, developed by the independent high school itself and submitted to the Department for approval.

The teacher committee agreed (recommendation B.7.1 below), and the Board subsequently concurred, that the Department should consider extending accreditation to teachers in non-funded independent high schools in accordance with existing policies and procedures, and appropriately supported by the Department's supervisory official for independent schools. The STF, which jointly sponsored accreditation seminars with the Department, would permit teachers from non-funded schools to attend these seminars. The Department, however, would be ultimately responsible for extending accreditation to Grade 12 teachers in non-funded schools.

The Board also agreed (recommendation B.7.2 below) that the province's post-secondary institutions should consider acceptance of courses taught in independent schools, designated 10I,

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[14] See Table 6.5.

20I, and 30I, as equivalent to regular 10, 20, and 30 courses both for admissions credit and as level 30 pre-requisites.

Then the curriculum committee considered how students in *registered* independent schools might achieve secondary level standing. First, students in registered schools can take the correspondence courses offered by the Saskatchewan Correspondence School in order to obtain level 10, 20, or 30 standing in a particular subject.

Second, students in registered independent schools may challenge Grade 12 departmental examinations for 100 percent. They may, in fact, prepare to challenge the departmental examinations by studying the relevant material, not only in an independent high school, but also in a private tutoring program, by home-study, or not at all.[15] The Department presently offers departmental examinations in the following subjects: English A30 and B30; French 30; mathematics 30, algebra 30, and geometry-trigonometry 30; physics 30, chemistry 30, biology 30, BSCS biology 30, and geology 30; social studies 30, social studies/history 30, economics 30, and geography 30.

Third, students who are adults may achieve *Grade 12 standing* on the basis of standing in English A30 and English B30; one of social studies 30, social studies/history 30, or economics 30; one 30 level credit from each of the social science, mathematics, and science areas of study; and two level 30 elective credits. As defined in *The Education Regulations*, clause 21(a), an adult is "a person who is at least 18 years of age and who has been out of [public] school for at least one year." Since an independent school is not a "school" as defined in *The Education Act*, clause 2(ff), a student in a registered independent school becomes an adult, by this definition, at age 18.

Fourth, students can only achieve complete *secondary standing* on the basis of a minimum of 24 credits at the secondary level, at least five or which must be earned in Grade 12.[16] Therefore, a student in a registered independent school, whether adult or not, can not achieve secondary level standing by writing a sufficient number of departmental examinations. The Department simply does not offer departmental examinations in level 10 and 20 subjects, or in level 30 arts education, health/physical education, or practical and applied arts.

Fifth, neither secondary level nor Grade 12 standing necessarily ensures that students will meet the admissions requirements either for the two provincial universities, for particular colleges at the two universities, for SIAST, or for particular programs at SIAST. The province's post-secondary institutions determine their own admissions requirements. Particular colleges of the universities determine their own admission requirements, too, as well as the level 30 pre-requisites for subjects like mathematics, physics, and chemistry.

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[15] Students, whether more or less than 18 years of age, are not, of course, advised to challenge the departmental examinations unless they are prepared to write them, for their mark will appear on their Saskatchewan Education transcript forever. If a student writes the same examination twice, and achieves a better mark the second time, he/she may use the second mark for purposes of calculating his/her grade average, but both marks will always remain on his/her transcript.

[16] See Table 6.4 again.

In the light of this information, the curriculum committee and ultimately the Board addressed several questions:

- Should students in registered independent schools, who are less than 18 years of age and who pass level 30 departmental examinations, be granted level 30 standing in subjects which had pre-requisite requirements?
- Should such students be granted Grade 12 standing before the age of 18 if they met the adult requirements for Grade 12 standing?
- Should the Department grant complete secondary standing rather than simply Grade 12 standing for meeting these adult requirements, before or after 18 years of age?

The major philosophical debate of the entire Advisory Board process centred on these three questions. Independent school representatives (leaving aside the historical high schools) made the following arguments in favour of granting secondary level standing to students in registered independent schools on the basis of eight Grade 12 departmentals alone.

First, this was the issue that independent church schools first brought to the attention of then Education Minister, Gordon Currie, in April 1983. Since that time, church schools had found themselves in a ping-pong game between the Department and the two universities, neither party accepting responsibility for dealing with this issue, all of which had led to increasing frustration. While the Board's other recommendations provided some opportunity for independent church schools to become accredited over time, this process was going to take a few years. If the Advisory Board continued, like the Department and the universities before it, not to accept the responsibility for dealing with this issue completely and fairly, then it would lead to further frustration by independent church schools.

Second, parental enrolment of children in registered independent schools was a matter of conscience. While parents recognized that they paid a price to be different, if society was going to recognize the existence of registered independent schools, society should also provide a fair mechanism to evaluate the graduates of such schools. Even granting secondary level standing on the basis of Grade 12 departmentals was not a completely fair mechanism, owing to the curriculum specific nature of the departmental examinations. Independent church schools would in fact prefer that the Department grant secondary level standing on the basis of a standardized test such as the American College Test (ACT), the Standardized Achievement Test (SAT), or some combination of Grade 12 departmentals and standardized tests.

Third, having assumed the responsibility for evaluating and certifying the academic achievement of secondary level students as they graduated from high school, the Government of Saskatchewan should not abdicate provision for educational measurement in the case of registered independent schools. To fail to provide for evaluating and certifying such students would be to penalize the students and their parents for exercising a constitutionally-recognized right of freedom of conscience. If failure to measure resulted in the non-admission of applicants to university, or to professional or other training or employment, a strong *prima facie* case of religious discrimination could arguably be made under section 15(1) of *The Charter*.

Fourth, the distinction between Grade 12 and secondary level standing was an arbitrary one. The neighbouring provinces of Alberta and Manitoba did not make this distinction.

The public education representatives made the following arguments in opposition to granting secondary level standing on the basis of eight Grade 12 departmentals alone.

First, the Department had to have one set of criteria for granting secondary level standing and not two. The Department should not grant privileges to students in registered independent schools that they did not also grant to students in public high schools. If the Department were to grant secondary level standing to students in public schools on the basis of Grade 12 departmentals alone, this would compromise the Department's entire system of granting secondary level standing in the public schools. Students could make little effort in grades 10 and 11, knowing that they could make it up in grade 12.

Second, various of the Board's other recommendations, particularly recommendation (B.3.5) on the 10I, 20I, and 30I courses, opened up new opportunities for independent schools to provide secondary level standing to their students. If an independent school decided to remain a registered school, this was their choice taken in full knowledge of the consequences.

Third, without more accountability than simply "inspection" of registered independent schools, the Department should not grant secondary standing to students in registered schools on the basis of eight Grade 12 departmentals alone.

Fourth, granting secondary level standing on the basis of standardized tests of some kind was not acceptable. Standardized tests were not an acceptable substitute for the evaluation of students' work by certified and accredited teachers.

The only additional recommendations on which the Board could agree were, first, that the province's two universities should consider accepting students from registered independent schools for admission on the basis of Grade 12 standing alone as opposed to complete secondary level standing, and second, that the Saskatchewan Correspondence School should consider delivering 10I, 20I, and 30I courses as appropriate. This would make it possible for smaller independent high schools to provide a more complete range of secondary level credits consistent with the philosophical orientation of their educational program.

Recommendations

(B.7.1) *That the Department consider extending accreditation to teachers in non-funded independent schools.*

(B.7.2) *That the province's post-secondary institutions consider acceptance of courses taught in independent schools, designated 10I, 20I, and 30I, as equivalent to regular 10, 20, and 30 courses, both for admissions credit and as level 30 pre-requisites.*

(B.7.3) *That the Universities of Saskatchewan and Regina consider acceptance of adult students for admission on the basis of Grade 12 standing. (An adult is a person "who is at least 18*

years of age and who has been out of [public] school for at least one year.")

(B.7.4) *That the Saskatchewan Correspondence School consider delivering 10I, 20I, and 30I courses as appropriate.*

Understandings

The Department's supervisory official will play the role of the regional director of education with respect to the accreditation of teachers in non-funded independent schools.

While the universities are represented on the Advisory Board, recommendations to the universities do not carry the same weight as recommendations to the Minister of Education.

Question (B.8)

What alternative educational experiences, if any, need to be recognized in lieu of compulsory attendance?

Discussion

This question arose from a particular concern of the Church of God in Christ (Mennonite) schools. From time to time, they have encouraged some of their students to participate in work-experience programs before these students are 16 years of age (the compulsory attendance age). They desired a mechanism to excuse such students from compulsory attendance at school.

The Board decided that the Department's supervisory official should have the authority to exempt a student of compulsory school age, who is attending an independent school, from attendance at school in accordance with clauses 156(b), (f), and (g) of *The Education Act*. These are the three clauses of section 156, other than clause (a), in which directors and superintendents presently have discretion to exempt children of compulsory school age from attendance at school. In particular, clause 156(g) says that a pupil may be exempted from attendance at a school if "the pupil is engaged in work-experience or other educational programs authorized or approved by the board of education."

Recommendations

(B.8.1) *That the Department's supervisory official for independent schools have the authority to exempt a student of compulsory school age, attending a registered or an accredited independent school, in accordance with clauses 156(b), (f), and (g) of The Education Act.*

(B.8.2) *That the Department's supervisory official for independent schools be responsible for ensuring that the attendance provisions of The Education Act are being met with respect to students enroled in independent schools.*

Understandings

In the case of clause 156(g), the board of the independent school that the student is attending will first have to approve the work-experience or other educational program, and the Department's supervisory official, at his/her discretion, will grant the exemption from attendance at a public school.

Question (B.9)

What access will independent schools have to in-service for curriculum implementation provided by Saskatchewan Education?

Discussion

Since accredited independent schools will have to conform to provincial curriculum policy and since registered independent schools will be encouraged to become accredited over time, the curriculum committee agreed, and the Board subsequently concurred, that the Department should facilitate access by independent schools to in-service associated with new curricula.

Recommendations

(B.9.1) *That the Department keep individual independent schools abreast of curriculum development in the province.*

(B.9.2) *That independent schools who choose to implement a new provincial curriculum during its implementation phase be invited to and have access to departmental in-service associated with the new curriculum.*

Understandings

These recommendations are consistent with recognizing independent schools as an integral part of the Saskatchewan education scene, and with encouraging all independent schools to become accredited over time.

Table 6.1

Goals of Education for Saskatchewan

Goals of education in Saskatchewan should direct efforts to develop the potential of all students in the province. Education should affirm the worth of each individual and lay the foundation for learning throughout life.

Students benefit from exposure to learning in a variety of situations. Attainment of the goals is a venture the school shares with the student, the home, the church, and the community. Although the degree of school responsibility will vary from community to community, the school has some responsibility for each goal.

A body of knowledge and a range of skills and attitudes are necessary to function in a changing world. It is intended, then, that education will enable Saskatchewan students to do the following to the best of their abilities:

Basic Skills

1 Read, write, and compute.
2. Acquire information and meaning through observing, listening, reading, and experiencing.
3. Process information through intellectual and technological means.
4. Solve problems by applying basic principles and processes of the sciences, arts, and humanities.
5. Communicate ideas through written and spoken language, mathematical symbols, and aesthetic expression.

Life-Long Learning

1. Seek and value learning experiences.
2. Act as self-reliant learners.
3. Base actions on the knowledge that it is necessary to learn throughout life.

Understanding and Relating to Others

1. Act on the belief that each individual is worthwhile.
2. Base actions on the recognition that people differ in their values, behaviours, and life styles.
3. Interact and feel comfortable with others who are different in race, religion, status, or personal attributes.
4. Develop a sense of responsibility toward others.

Self Concept Development

1. Perceive themselves in a positive way.
2. Appreciate their own abilities and limitations.
3. Set and work towards personal goals.
4. Assess praise and criticism realistically.
5. Present themselves with confidence.

Positive Life Style

1. Practice appropriate personal hygiene, engage in sufficient physical activity, and maintain a nutritionally balanced diet.
2. Avoid harmful use of alcohol and other drugs.
3. Cultivate interests that may be the basis for personal development and leisure pursuits.
4. Recognize the importance of productive activity.
5. Display initiative and pursue tasks diligently.
6. Maintain a safe and healthful community.
7. Respect and seek to enhance the environment.
8. Appreciate beauty in its many natural and constructed forms.
9. Express themselves creatively.

Spiritual Development

1. Seek an understanding of the purpose and worth of human existence.
2. Develop a knowledge of God.
3. Respect family, religion, and culture in a pluralistic society.

Career and Consumer Decisions

1. Develop an awareness of career opportunities.
2. Develop interests and abilities in relation to vocational expectations.
3. Adapt to shifts in employment patterns and technology.
4. Make informed consumer decisions.

Membership in Society

1. Assume responsibility for their own actions.
2. Work with others to achieve individual and group goals.
3. Participate in the democratic processes of government and perform the duties of citizenship.
4. Respect the rights and property of others.
5. Act with honesty, integrity, compassion, and fairness.
6. Develop a sense of national pride and acknowledge the need for international understanding.
7. Work toward greater social justice.
8. Assume responsibility for dependent persons in a manner consistent with their needs.
9. Respect law and authority.
10. Exercise the right of dissent responsibly.

Growing with Change

1. Work toward immediate and long-term goals.
2. Base actions on an understanding that change is a natural process in society.
3. Select workable alternatives in response to changing conditions.
4. Develop confidence in making decisions that involve risk.

Table 6.3

Time and Credit Allocations Elementary Level (grades 1 to 5)

Areas of Study	**Minutes per Week**
language arts	560
mathematics	210
science	150
social studies	150
health education	80
arts education	200
physical education	150
***Locally-Determined Options**	
• maximum	300
• minimum	0
Total time available	1500

*Time for locally-determined options may be gained by reducing the required areas by no more than 20% in any area. This creates a maximum of 300 minutes per week for locally-determined options. Future curriculum guides will identify the optional units in each course of study.

Table 6.3

Time and Credit Allocations
Middle Level (grades 6 to 9)

Areas of Study	Minutes per Week	
	grade 6	grades 7 to 9
language arts	510	300
mathematics	210	200
science	150	150
social studies	150	150
health education	80	100
arts education	200	200
physical education	150	150
guidance	50	50
***Locally-Determined Options**		
• maximum	300	375
• minimum	0	200
Total time available	1500	1500

*Time for locally-determined options may be gained by reducing the required areas by no more than 20% in any area. This creates a maximum of 375 minutes per week for locally-determined options. Future curriculum guides will identify the optional units in each course of study.

Guidance is not one of the seven required areas of study. However, it will continue to receive attention as a service and instruction component at the Middle Level.

Table 6.4

Time and Credit Allocations Secondary Level (grades 10 to 12)

Program		Credits	
Required Courses of Study	**grade 10**	**grade 11**	**grade 12**
language arts	2	2	2
mathematics	1		
science	1		
social studies	1		1

Specified Areas of Study	**grade 10, 11 or 12**	**grade 11 or 12**
mathematics		1
science		1
social science		1
*health/physical education	1	
*arts education	1	
*practical and applied arts	2	

Unspecified Electives	**grade 10**	**grade 11 or 12**
	2	5

Service Area	**guidance and counselling**		
Grade Standing	grade 10 minimum 8 credits	grade 11 minimum 16 credits	grade 12 minimum 24 credits
Graduation Requirements		A minimum of 24 credits, at least five of which shall be earned in grade 12.	

*As an interim policy, until further notice, only two credits are required from Grades 10, 11, and 12 in health/physical education, arts education, or practical and applied arts, but these credits must include *two different* curriculum areas. Christian Ethics may be used to meet the practical and applied arts requirement.

Table 6.5

Saskatchewan Education Accreditation Policy (August 1988)[17]

The revised accreditation policy contained herein is authorized for implementation in the Province of Saskatchewan. This policy is recognized by Saskatchewan Education, Saskatchewan School Trustees Association, and Saskatchewan Teachers' Federation.

Definition of Accreditation

Insofar as this policy is concerned, "accreditation" means granting to a teacher the responsibility of determining the final mark or standing of the students in a specified Grade 12 (level 30) subject or subjects.

It is understood that the courses taught by a teacher granted accreditation privileges must be within the general framework of the provincial course outline.

Teacher-By-Subject/Subject Areas

Teachers may be accredited in the following subject(s):

> English A, English B, Social Studies/History, Social Studies, Economics, Geography, Algebra, Geometry-Trigonometry, Mathematics, BSCS Biology, Modern Biology, Chemistry, Physics, French, and Francais.

Requirements for Accreditation

1. To be eligible to practise accreditation in the subjects listed, a teacher must:

    1.1 hold a professional certificate;
    1.2 have at least two years of successful teaching experience;
    1.3 have attended an accreditation seminar;
    1.4 have university standing (credits earned) that totals 24 academic hours of academic and professional courses including a minimum of 12 academic course hours in the subject area in which accreditation is being sought and a minimum of 3-4 hours in a methodology course of the subject area. In addition, 8-9 academic course hours in related areas are acceptable.

2. To apply for accreditation a teacher must:

    2.1 apply for accreditation on the application form obtainable from the principal or Director of Education on or before September 30th of each school year, or September 30th and February 28th of each semester;

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[17] The Accreditation and Provincial Examinations Review Committee recommended some modifications to this policy to the Minister in June 1990.

2.2 provide the Director of Education with evidence that s/he meets the requirements as outlined;

2.3 obtain approval for accreditation from the principal, Director of Education, and the Regional Director of Education.

Policies and Procedures

1. Unless the Director of Evaluation and Student Services and Registrar, Saskatchewan Education, receives notification to the contrary from the Regional Director of Education, all teachers accredited in Grade 12 subjects will continue to be accredited in these subjects if they remain in the employ of the same school board.

2. Students taught by an accredited teacher must accept the evaluation of the accredited teacher in the semester or term in which the subject is taken. Saskatchewan Education will accept the evaluation of accredited teachers. The final marks as141gned by the teacher shall be submitted to Saskatchewan Education on Form 239.

3. Students wishing to appeal an evaluation from an accredited teacher shall have the opportunity to write either a teacher-prepared comprehensive supplemental or a department-prepared supplemental examination in accordance with the regulations governing the writing of examinations. The student who elects to write a teacher-prepared supplemental examination is obligated to give the teacher adequate notification of his intention.

Special Review Committee

A Special Review Committee with representation from the Saskatchewan Teachers' Federation, Saskatchewan School Trustees Association, and Saskatchewan Education has been set up to review applications of teachers where there is a question regarding qualifications.

Accreditation Seminar

The Accreditation Seminar is developed by the Saskatchewan Teachers's Federation in consultation with Saskatchewan School Trustees Association and Saskatchewan Education. The following principles apply:

1. Accreditation Seminars will be available in English, French, Social Sciences (Social Studies/History, Social Studies, Geography), Sciences (Biology Modern, Biology BSCS, Chemistry, Physics, Geology), Mathematics (Mathematics, Algebra, Geometry-Trigonometry), and Francais.

2. The Accreditation Seminar will be a minimum of 35 hours.

3. Teachers seeking accreditation in a second subject area will be required to participate in the following modules: Evaluation, Professional Exchange, and Curriculum and Evaluation

4. Although there may be accreditation seminars in the social sciences, mathematics, and sciences, teachers seeking accreditation in a specific subject must meet the academic requirements of that subject.

Table 6.6

Suggested Responsibilities of the Department's Supervisory Official for Independent Schools[18]

A. To receive and process forms submitted by independent schools:[19]

- Preparing forms and giving any instructions that may be necessary to making reports and returns for carrying out the provisions of *The Education Act*, as it applies to them, and the independent school regulations. [*The Education Act*, clause 9(b)]
- Certifying that teachers in independent schools are teaching successfully, in respect of provisional certificates and practicums. [(A.2.1.) and (A.2.2)]
- Receiving and processing applications for Probationary "B" Teaching Certificates and Letters of Eligibility to Teach. [(A.2.3), (A.2.4), (A.3.1), and (A.3.2)]
- Receiving and processing applications for locally developed courses of study, designated 10L, 20L, or 30L, and for regular courses originating from independent schools, designated 10I, 20I, and 30I. [(B.3.4) and (B.3.5)]
- Considering and approving programs for independent schools at the elementary and middle levels. [(B.3.6)]
- Transmitting requests for additions to the recommended materials list for independent schools. [(B.4)]
- Receiving and processing applications for registration and accreditation of independent schools. [(D.2) and (D.3)]

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[18] Recommendation (B.6.1) is the foundational recommendation, that "the Department should be responsibile, at the expense of the Department, for the inspection of registered independent schools and for the supervision of accredited independent schools." In accordance with recommendation (B.6.4), accredited schools should have the option of arranging for supervision by a local director or superintendent, in which cases, many of these duties would be performed by that local director or superintendent. In accordance with recommendation (B.6.5), individuals providing supervisory services should meet the qualifications of directors of education as outlined in *The Education Regulations*, section 5.

[19] The first four categories of responsibilities -- A, B, C, and D -- are consistent with the duties of directors of education as set forth in *The Education Act*, section 108.

B. To ensure that independent schools are conducted in accordance with *The Education Act*, as it applies to them, and the independent school regulations:

- Ensuring that teachers in religiously-based registered independent schools hold either a valid Saskatchewan teacher's certificate or Letter of Eligibility To Teach. [(A.1.1)]
- Ensuring that teachers in all other registered and accredited independent schools hold a valid Saskatchewan teacher's certificate. [(A.1.1)]
- Ensuring that all independent schools are operating full-time programs consistent with the spirit of *The Education Act*, sections 164 to 168. [(B.1.1) to (B.1.3)]
- Ensuring that registered independent schools do not have goals that are inconsistent with the goals of education for Saskatchewan. [(B.2.1)]
- Ensuring that accredited independent schools subscribe to the goals of education for Saskatchewan. [(B.2.2)]
- Ensuring that registered independent schools are providing instruction in the required areas of study, appropriate for the age and ability of their pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy. [(B.3.1)]
- Ensuring that accredited independent schools are conforming to provincial curriculum policy in respect of the required areas of study, common essential learnings, locally-determined options, adaptive dimension, and time and credit allocations. [(B.3.2)]
- Ensuring that alternative independent schools are conforming to provincial curriculum policy in respect of alternative education. [(B.3.3)]
- Ensuring that independent schools are abiding by section 180 of *The Education Act* in respect of the language of instruction. [(B.3.7)]
- Ensuring that independent schools are abiding by subsection 181(1) of *The Education Act* in respect of non-credit religious instruction in the religious doctrine or creed of the parent body operating the independent school. [(B.5)]
- Inspecting school facilities when visiting schools. [(C.1.1) and (C.1.2)]
- Removing Letters of Eligibility To Teach and/or school registrations where criteria are not being met, subject to the principles of fundamental justice. [(D.3.4)]

C. To ensure that the principals or directors of independent schools are exercising general supervision of the work of teachers and other personnel in independent schools:

- Inspecting registered independent schools. [(B.6.1) and (B.6.2)]
- Supervising accredited independent schools. [(B.6.1) and (B.6.3)]

D. To provide educational leadership pertaining to the advancement of education in independent schools:

- Preparing and distributing recommendations and advice on the management of independent schools for board members, principals, and teachers. [*The Education Act*, clause 9(a)]
- (Maybe) representing independent schools on the Board of Teacher Education and Certification. [(A.2.5)]
- (Maybe) representing independent schools on the K-12 Education Program Policies Advisory Committee. [(B.3.8)]
- Helping to keep individual independent schools abreast of curriculum development in the province. [(B.9.1)]
- Facilitating access of independent schools to curriculum in-service. [(B.9.2)]

E. Others:

- Facilitating the placement of student interns who wish to complete their practicum in an accredited independent school. [(A.4.1)]
- Facilitating the participation of teachers from non-funded schools at accreditation seminars. [(B.7.1)]
- Facilitating the writing of Grade 12 examinations by students in independent schools.
- Exempting pupils of compulsory school age, attending a registered or an accredited independent school, in accordance with clauses 156(b), (f), and (g) of *The Education Act*. [(B.8.1)]
- Ensuring that the attendance provisions of *The Education Act* are being met with respect to students enroled in independent schools. [(B.8.2)]
- Notifying local authorities of the existence of independent schools in order to ensure regular inspections of independent school facilities. [(C.1.1) and (C.1.2)]
- Providing consultative services or contacts to independent schools with respect to special needs students. [(C.4)]
- Facilitating contact between teachers in public and independent schools. [(C.5)]
- Facilitating access of independent schools to common teacher resources. [(C.6)]
- (Maybe) facilitating the placement of students in alternative independent schools. [(D.5.2)]

VII. Student/Teacher Needs

Legislation and Regulations with Respect to Public Schools in Saskatchewan

At the request of the Board, Harry Dahl, special education co-ordinator for Region 4 (Saskatoon), and Margaret Lipp, Acting Director of the Special Education Branch of the Department of Education, gave a presentation to the Board on "Student needs and services provided for special needs children in Saskatchewan" at the fifth meeting of the Board on February 7, 1990; and Irv Brunas, Director of the School Facilities Planning Branch, gave a presentation on "School facilities in Saskatchewan" at the sixth meeting of the Board on March 15, 1990. Most of the material in this section comes from their presentations.

From the point of view of the Advisory Board, the following sections of Saskatchewan's *Education Act* were particularly relevant to student/teacher needs:

- 91 A board of education shall:
  (d) provide and maintain school accommodation, equipment and facilities considered necessary and adequate for the educational programs and instructional services approved by the board for each of its schools;
  (k) subject to the regulations, furnish transportation services to pupils to and from school that may be considered by the board to be necessary to insure access of pupils to, and regularity of attendance in, the schools of the division;

- 92 A board of education may:
  (c) enter into agreements with other boards of education for the purpose of providing and administering jointly any service of mutual benefit and convenience;

- 144 (1) Every person between the ages of six and 21 years shall have the right to attend school in the division in which he or his parents or guardian are residents, and to receive instruction appropriate to his age and level of educational achievement in courses of instruction approved by the board of education in the school or schools of the division.

  (2) Except as otherwise provided in this Act, the educational services mentioned in subsection (1) are to be provided at the cost of the school division, and no fees for tuition, transportation or any other expenses with respect to attendance at school are to be charged with respect to a pupil who is a resident in the school division or whose parent or guardian is a resident in the school division.

- 145 Except as otherwise provided in this Act, services approved by a board of education, with respect to the pupils who are eligible for the special programs mentioned in section 184 or who are otherwise entitled to services of benefit to their general health and well-being, shall be provided without cost to such pupils or their parents or guardians.

- 156 A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penality imposed by this Act, where:

> (c) the distance to a school which the pupil is entitled to attend or to a school bus route is in excess of four kilometres, as measured by the nearest passable road from the place of residence of the pupil to the said school or school bus route, as the case may be.

- 184 (2) Subject to the regulations, a board of education shall provide educational services on behalf of pupils with disabilities;

- 185 Where the ordinary programs of instruction of the school are considered by the board of education to be insufficient to meet the educational needs of certain pupils of superior natural ability or exceptional talent, the board may make provision for such special programs as it considers feasible and appropriate.

- 187 Subject to the regulations, every school division shall make provision for the education and training, in the elements of safety and competence in the operation of motor vehicles, for pupils who are eligible.

- 192(1) Transportation services provided to pupils pursuant to clause 91(k) and the bylaws of the board of education shall be provided at the cost of the division;

In other words, all Saskatchewan students between the ages of 6 and 21 have the right to attend a public (or separate) school located in the school division in which they reside, at the cost of the school division.[1] Subject to regulations, school divisions are required to provide transportation services (to students who live more than four kilometres from school) and driver education; they are required to provide educational services to students with disabilities of various kinds; and they may provide services for gifted students.

The Education Regulations, section 49, define eight categories of disabled students: visually impaired/blind; hearing impaired/deaf; trainable mentally retarded; severely learning disabled; orthopedically disabled; chronically health impaired; socially, emotionally, or behaviourally disabled; and severely multiple disabled. Public boards of education have been required to provide services to such students since 1971. Historically, many disabled students received their education at special schools, say, for the visually impaired at Brantford, Ontario, and for the hearing impaired at the R.J.D. Williams School for the Deaf in Saskatoon. Increasingly, in the 1970s and 1980s, however, parents have desired that their children receive their education in local, neighbourhood schools. Hence, public boards of education now deliver services to most disabled students directly in the classroom, usually with some arrangements for support personnel.

Then in the early 1980s, the Department of Education mandated shared services arrangements for rural boards of education. For each shared service, which usually comprises a minimum of 7,000 students, rural boards of education must jointly supply a minimum of 3 1/2 full-time consultants, including at least one school psychologist, and one speech/language pathologist. In order to administer shared services arrangements, rural boards of education generally establish joint boards under *The Education Act*, sections 96 to 100.

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[1] While students have the right to attend a public (or separate) school between the ages of six and 21, students generally start school at age 5 (Kindergarten) and remain in school at least until age 16 (the compulsory attendance age) or until they graduate from high school.

Also in the 1980s, professional educators have come to recognize an increasing number of special needs students whose education is "at risk", but who do not fit into the traditional categories of disabled students. These include students who are suffering from physical, mental, emotional, or sexual abuse; dependent on alcohol or drugs; suffering from AIDS or fetal alcohol syndrome; suffering from poverty or hunger; members of a cultural or racial minority; young offenders; wards of the state; latch-key kids; or street kids. Such students frequently require *adaptive* or *alternative* programs, as these terms are understood in the context of Core Curriculum.

The Department of Education and public boards of education have a joint responsibility for the construction of school buildings, with the Department presently contributing approximately 80 percent of the capital costs of school construction. The School Facilities Branch of the Department advises the Minister with respect to the allocation of the available budget based on an established priorization of needs. Health and safety needs receive the highest priority.

The Facilities Planning Branch of the Department is primarily involved in facilities planning, not in the actual enforcement of building codes. Nonetheless, in priorizing board of education requests for grants, the Branch has to examine existing and potential situations, and was involved in the formulation of building codes. Local municipalities are responsible for the enforcement of building codes.

The province of Saskatchewan has adopted the national building code for its buildings. In general, the stringency of particular codes relates to usage and occupancy. Hospitals and schools have the most stringent codes of all buildings.

Public boards of education actually have the authority to finance capital projects even if they do not receive Department funding. In such cases, however, the Department must still approve the building plans, as must the Department of Health, and the Fire Commissioner.

The historical high schools are eligible for capital grants equal to 20 percent of recognized costs.

Legislation and Regulations with Respect to Independent Schools in Other Provinces

Again, as previously discussed, the Secretariat to the Board reviewed legislation and regulations pertaining to student/teacher needs in independent schools in six other provinces.

With respect to school facilities, all six provinces require that independent school facilities meet local building codes, and health and fire regulations. However, local government authorities, not the provincial Departments of Education, are responsible for enforcing building codes, and health and fire regulations.

In New Brunswick and Ontario, each independent school must *declare* on its annual registration form that its facilities have been approved for use as a school by the local building commissioner, the local medical health officer, and the local fire commissioner, but the school does not have to submit written certification of this.

In Alberta, when applying to the Department for registration or accreditation, independent schools must actually submit written "proof of compliance with municipal zoning by-laws and all applicable municipal and provincial public health, safety and building standards requirements".

In British Columbia, before issuing or renewing a certificate of classification for any of the five categories of schools, the Inspector must be satisfied that "the independent school facilities comply with the enactments of British Columbia and the municipality or regional district in which the facilities are located". In general, the Inspector checks for compliance when visiting schools upon initial application for registration or accreditation.

Manitoba appears to be the only province that makes explicit provision in legislation or in regulation that a public school board may enter into an agreement with a private school "to provide under the supervision and control of the school board to children enroled in the private school transportation from points on the regular public school bus route operated by the school board on the same route."

Manitoba further provides that a school board may enter into an annual agreement with a private school "respecting the use of the facilities and resources of the school division or school district, other than transportation facilities and resources, by or for the benefit of children enroled in the private school while attending a public school operated by a school division or school district." Typical shared services include gymnasiums, home economics and industrial arts facilities, and clinicians.

Provincial grants to school divisions include amounts in respect of such agreements for transportation services and clinicians.

In Alberta and British Columbia, while public and independent school boards may enter into general understandings or contractual arrangements with respect to the transportation of independent school students on public school buses, provincial grants to public schools do not include amounts in respect of such understandings or arranagements.

In theory, independent schools in Manitoba, Alberta, and British Columbia have access to clinicians in the regional offices of Departments of Education, but this is somewhat variable in practice, due to the excess demand for such services.

Questions, Discussions, Recommendations, and Understandings

Question (C.1)

What regulations should there be with respect to the facilities of independent schools?

Discussion

The student/teacher needs began its discussion of this question by reviewing the material presented by Irv Brunas of the Facilities Planning Branch and the laws and regulations with respect to independent school facilities in other provinces. During the ensuing discussion, the following points were made:

- All independent schools were concerned that their facilities were safe and healthy places for children to learn, but they did not have the resources to build palaces.
- Independent schools should be expected to meet local building codes as well as local fire and health regulations, but could not be expected to meet more than this unless the government was willing to help finance construction of their facilities.
- The biggest problems were associated with older buildings. Independent schools were often located in older buildings.
- The Facilities Planning Branch of the Department was primarily involved in facilities planning, not in the enforcement of building codes. Local municipalities were responsible for enforcement of the codes.
- The enforcement of codes for independent schools should remain with local municipal, health, and fire officials. However, this did not preclude the Department's supervisory official from inspecting facilities when visiting schools.
- Independent schools in other provinces also had to meet local building codes as well as local fire and health regulations. In some provinces (e.g. New Brunswick and Ontario), schools had to declare that they met the codes and regulations; in other provinces (e.g. Alberta), schools had to provide written proof before the Department would register or accredit their school.

Committee members agreed and the Board subsequently concurred that independent schools properly had an onus to demonstrate to the Department that their school facilities met established construction, health, and safety standards. Upon application for registration, Saskatchewan schools should have to provide written certification, not simply declare, that their facilities met established standards. In this respect, it would be more difficult for the Department to de-register a school than to deny registration in the first place.

Recommendations

(C.1.1) *That each independent school facility must meet construction, health, and safety standards as required by national, provincial, and local authorities.*

(C.1.2) *That, upon application for registration of its school, each independent school must provide certification that its facility meets the above construction, health, and safety standards.*

Understandings

The actual enforcement of construction, health, and safety standards will remain with local municipal, health, and fire officials. However, this does not preclude the Department's supervisory official from inspecting facilities when visiting independent schools.

The Independent Schools Branch will notify local authorities of the existence of independent schools in order to ensure regular inspections of independent school facilities.

Issues such as gymnasiums, science labs, industrial arts facilities, and resource centres are really curriculum issues. The Department's supervisory official for independent schools will check that students have access to such facilities before approving programs or courses requiring such facilities.

Questions (C.2) and (C.3)

What recommendations, if any, should there be with respect to the transportation of pupils attending independent schools?

What recommendations, if any, should there be with respect to driver education for pupils attending independent schools?

Discussion

The student/teacher needs committee and the Board considered these two questions together. The committee began its discussion of these questions by reviewing the policy framework for the Board as established by the Minister and the Minister's letter of November 27, 1989, clarifying this framework, which stated, respectively, as follows:

> The costs of operating independent schools will continue to rest with parents who choose this form of education. There will be no new operating grants for independent schools beyond that currently provided for accredited high schools.
>
> No new grants will be paid directly to independent schools for any operating purposes. Boards of education are free to enter into voluntary arrangements with independent schools to provide services such as transportation. However, any incremental costs associated with such services will not be recognized by the Department of Education for grant calculation purposes.

In the ensuing discussion, the following points were made:

- Public boards of education already knew that they could enter into voluntary arrangements with independent school boards in respect of bus transportation and driver education. Given the policy framework and the Minister's letter of November 27, it would be sufficient that the final report indicate that the Advisory Board had discussed these two issues.

- The Minister had also said in his letter of November 27 that the Board's recommendations should promote a "harmonious relationship" between independent and public schools. "It would clearly be unhelpful if the Board were to make recommendations which would serve to isolate independent schools." Therefore, the Advisory Board should do more than simply indicate that it had discussed these two issues.

- Most parents of children in independent schools accepted that they had the responsibility to transport their children to school. Also, independent schools were not asking public schools to put on more buses just for their students. However, some public boards of education were already providing bus transportation to students in independent schools, while others were not. This was creating a perception of inequity among independent school parents.

- This issue was more complicated than simply not wanting to transport independent school children on public school buses. Boards of education usually had valid reasons for not transporting other schools' students on their buses, such as questions of liability and questions of discipline.

- Negotiated arrangements did not have to be gratis. Public boards of education could charge fees for providing bus transportation or driver education. Even having to pay fees would save some independent school parents some money.

Recommendation

(C.2) *That public and independent school boards may negotiate arrangements, including fee-for-service arrangements, for the provision of services such as bus transportation and driver education to pupils in independent schools.*

Understandings

This is more of an acknowledgement of what the Minister has said about the existing situation with respect to bus transportation and driver education as opposed to a new recommendation. Incremental costs associated with the provision of such services to independent school pupils will not be recognized for grant calculation purposes.

Negotiated arrangements do not have to be gratis. Public boards of education can charge fees for providing bus transportation or driver education.

Where public and independent school boards have already negotiated arrangements, it is hoped that these will continue.

Question (C.4)

What accommodations, if any, should be made with respect to the needs of special needs children in independent schools:

(a) psychological testing?
(b) speech and language services?
(c) other?

Discussion

The student/teacher needs committee reviewed the policy framework of the Board and the Minister's letter of November 27, 1989, clarifying this framework; what services the Department presently provided in this area; and recommendations arising from the teacher and curriculum committees. While both these committees had agreed that that the Department should provide some services, such as supervisory services, to independent schools, at what point did "services provided" become in effect "operating grants" to independent schools?

In the ensuing discussion, the following points were made:

- Independent schools received their share of applications to accept special needs children, not all of whom could be accommodated.

- As a general rule, the Department should not provide services to independent schools that public boards of education were normally expected to provide out of their own budgets.

- The provision of some services would indicate to independent schools that the Government was interested in the well-being of students in independent schools.

- If the Department was concerned about the welfare of special needs students, how could the Department not provide any services at all?

- The Board's recommendations had to accord with the policy framework laid down by the Minister. The Board could not operate by two different sets of rules, one for other issues and a second for this issue.

- Parents enroled their children in independent schools in order to meet certain religious or spiritual needs of children that public schools could no longer provide under the *Charter of Rights and Freedoms*. Parents accepted that they had to pay extra for this. However, the needs of special needs students were of a different character.

- The needs of special needs students were basic health needs which it was the responsibility of the Government to provide to all students in Saskatchewan, whichever school the students attended. For example, independent school students participated in medicare and the dental plan; they should also have access, at least to diagnostic or assessment services relating to special needs.

- The Department's regional offices are a resource to the entire province. If an independent school called, say, the Saskatoon regional office, could the special education co-ordinator in good conscience refuse to give advice to the independent school concerning how to deal with a particular situation?
- The public education representatives did not oppose the Department providing such consultative services to independent schools. For example, the Department's supervisory official for independent schools might help an independent school make some appropriate contacts in order to meet a particular special need.
- There was a distinction between diagnosis or assessment of a student's needs on the one hand, and treatment or intervention concerning the student's educational program on the other. This was a workable operational distinction according to which the Board could make a recommendation within the policy framework laid down by the Minister.

Recommendation

(C.4) *That, consistent with the policy framework laid down by the Minister for the Advisory Board, the Department of Education provide diagnostic and assessment services for special needs students in independent schools.*

Understandings

For the Department to provide diagnostic or assessment services to special needs students would not violate the Minister's policy framework, as understood by the Board, in respect of no new operating grants for independent schools. For the Department to provide services for treatment or intervention concerning the student's educational program would violate this framework. Independent schools are expected to provide the latter out of their own resources.

Question (C.5)

What recommendations, if any, should be made with respect to continuing professional contact between teachers in public and independent schools?

Discussion

The student/teacher needs committee began by reviewing the present situation and the recommendations that the teacher and curriculum committees had already made relating to this question.

Teachers in the historical high schools were members of the STF, and already had open access to workshops put on by the Department, public boards of education, the STF, and other organizations.

The teacher and curriculum committees had made three recommendations -- recommendation B.7.1), (B.9.1), and (B.9.2) -- that were specifically intended to encourage independent schools to become an integral part of the Saskatchewan education scene.

On the teacher committee, the STF had indicated that it might be open to providing services to certified teachers in non-funded independent schools, and that it might be prepared to examine its own categories of membership in order to provide such services.

Recommendation

(C.5) *That teachers in independent schools be invited to participate in activities that facilitate professional contact between teachers in public and independent schools.*

Understandings

This recommendation is consistent with encouraging independent schools to become an integral part of the Saskatchewan education scene.

Recommendations to third parties do not carry the same weight as recommendations to the Minister of Education (principle #29).

Question (C.6)

What access should be available to common teacher resources:
(a) curriculum guides?
(b) instructional resources?
(c) Book Bureau?
(d) other?

Discussion

The student/teacher needs committee began by reviewing the recommendations that the curriculum committee had already made relating to this question, in particular, recommendation (B.3.2), "that accredited independent schools *per se* and the historical high schools should conform to provincial curriculum policy."

If accredited schools had to conform to provincial curriculum policy, and if registered schools were going to be encouraged to become accredited over time, then the Department should facilitate this.

Public boards of education, principals, teachers, and the historical high schools could presently obtain curriculum guides at no cost from the regional offices. The Department should work out a similar arrangement for the other independent schools, perhaps through the Independent Schools

Branch.

Recommendation

(C.6) *That independent schools have access to common teacher resources, on a fee-for-service basis where appropriate. Curriculum guides should be provided at no cost.*

Understandings

The Department will facilitate independent schools conforming to provincial curriculum policy, in accordance with recommendations (B.3.2) and (B.3.3).

Curriculum guides should be provided at no cost. Providing all instructional resources at no cost, however, could become very expensive. Therefore, particular situations will be assessed individually.

What public boards of education receive free in terms of common teacher resources, independent school boards should also receive free.

The Independent Schools Branch will be involved in the provision of common teacher resources to independent schools.

Question (C.7)

What recommendations, if any, should be made with respect to the welfare of teachers in independent schools?

Discussion

The student/teacher needs committee decided to make no recommendations to the Board in this area. This was not a burning issue for independent schools. Independent schools recognized that participation in the Teachers' Superannuation Plan was a negotiated item in the teachers' collective agreement. Only teachers in funded independent schools could become full members of the STF and participate in the pension plan.

Recommendations

None.

VIII. Other Issues

Legislation and Regulations with Respect to Public Schools in Saskatchewan

The entire Advisory Board considered these other issues, which are listed in Table 2.4, at its seventh and eighth meetings on April 25 and May 15, 1990, respectively.

From the point of view of the Advisory Board, the following sections of Saskatchewan's *Education Act* were particularly relevant to these other issues.

- 2 In this Act:
  (g) "compulsory school age" means having attained the age of seven years but not having attained the age of 16 years.
  (s.1) "independent school" means an institution:
    (i) in which instruction is provided to pupils of compulsory school age; and
    (ii) which is controlled and administered by a person that is not a public authority;
  (ee) "pupil" means a person who is enrolled in a school or registered independent school and includes any person who is of compulsory school age;
  (ee.1) "registered independent school" means an independent school registered pursuant to this Act and the regulations;
  (ff) "school" means a body of pupils that is organized as a unit for educational purposes under the jurisdiction of a board of education or of the department that comprises one or more instructional groups or classes, together with the principal and teaching staff and other employees assigned to that body of pupils, and includes the land, buildings or other premises and permanent improvements used by and in connection with that body of pupils but does not include an independent school.

- 9 The minister shall:
  (a) prepare and distribute recommendations and advice on the management of schools, school divisions and school districts for trustees, principals, and teachers;
  (b) prepare the forms and give any instructions that may be necessary for making reports and returns and for carrying out the provisions of this Act.

- 10(1) The minister may:
  (n) approve the form of the register of attendance and the manner of its use in recording the daily attendance of pupils, and prescribe the form in which enrolment and attendance data shall be submitted to the department;
  (q) make provision for the registration of independent schools.

- 91 A board of education shall:
  (u) prepare or cause to be prepared such reports and returns concerning statistical data, budgetary information and reports respecting the operation of schools as may be required from time to time by the minister.

- 92 A board of education may:
  (u) close any school or part thereof or discontinue one or more of the grades or years taught in a school, but no action shall be taken pursuant to this clause in the case of a school situated in a school district, unless:
    - (i) the consent of the board of trustees or local school advisory committee of the school district affected by such closure has been obtained; or
    - (ii) the board of education has, at least six months before taking action under this clause, notified the board of trustees or local school advisory committee by certified or registered mail of its intention and has consulted with the board of trustees or local school advisory committee with respect to educational services for pupils affected by the proposed discontinuance of classes of instruction or closure of classrooms and schools.

- 146 All records of a school pertaining to a pupil are confidential, but access is to be granted, under any conditions that may be prescribed by the board of education, to:
  - (a) a pupil who requests access and whose parent or guardian is in attendance when access is granted;
  - (b) a pupil who is 16 or more years of age and who is living independently of a parent or guardian;
  - (c) duly authorized officers of the department;
  - (d) school officials designated by the board of education;
  - (e) a youth worker as defined in *The Young Offenders Act* (Canada), as amended fro time to time, who requests access for the purposes of that Act;
  - (f) a parent or guardian of a pupil, where the pupil is dependent on the parent or guardian.

- 155(1) Except as otherwise noted in this Act, every parent, guardian or other person having charge of a pupil who is of compulsory school age shall take all steps that are necessary to ensure regular attendance of that pupil:
  - (a) at the school determined or authorized by the board of education of the division in which the pupil resides; and
  - (b) for the period during which the school described in clause (a) is in operation in each year.

- 156 A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penalty imposed by this Act, where:
  - (a) the pupil is under a program of instruction approved by the director or superintendent at home or elsewhere;
  - (a.1) the pupil is in attendance at a registered independent school.

- 361(1) The operator of:
  - (a) any registered independent school; or
  - (b) any educational institution which provides educational services to pupils in courses of instruction prescribed under this Act;

  subject to the regulations, when required by the minister, shall furnish information to the department in any form the minister may require with respect to the pupils, teachers, curriculum, facilities and equipment of that school or other educational institution.

Legislation and Regulations with Respect to Independent Schools in Other Provinces

Legal Framework

Quebec and British Columbia are the only two provinces that have statutes that pertain specifically to the operation of independent schools: The Quebec *Private Education Act* dates from 1968 and the British Columbia *Independent School Act* dates from 1977. The B.C. legislation and regulations underwent a major revision in 1989, which are presently in the process of being implemented.

Alberta, Manitoba, and Ontario recognize independent or private schools in their general education acts. In Alberta, most legislation has been enacted by regulation, starting around 1967. Significant revisions occurred in the wake of the *Wiebe* decision in 1978 and the *Jones* decision in 1986. The entire *School Act* underwent a major revision, including the provisions regarding private schools, in 1988, which brought forth new regulations for private schools in 1989.

In Manitoba, most regulation and administration relates to the funding of eligible private schools. In the wake of promises to increase the level of funding by both the government and opposition parties during the 1989 Manitoba election, revisions to the legislation and regulation providing for significant increases in funding have just been made (1990).

In Ontario, reference to private schools first appeared in *The School Administration Act* in 1962. Legislative provisions concerning private schools have not changed since this time, notwithstanding either the consolidation of all their educational acts in 1974 (like Saskatchewan did in 1978), or a major commission on private schools in Ontario (the Shapiro Commission) in 1985. Ontario has no regulations with respect to private schools.

New Brunswick and Nova Scotia do not refer to private or independent schools in their educational legislation. Therefore, such schools, while they exist, do not operate under the authority, responsibility, direction, or supervision of the Minister of Education. However, under the compulsory attendance sections of their legislation, the Departments have put in place administrative arrangements to satisfy the Department that children in independent schools are receiving "efficient instruction elsewhere".

Statements of Principles

The preamble to the British Columbia *Independent School Act* states:

> Whereas the purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy. . .

The preamble to the Alberta *School Act* states:

> Whereas the best educational interests of the student are the paramount considerations in the exercise of any authority under this Act; and
>
> Whereas parents have a right and a responsibility to make decisions respecting the education of their children; and
>
> Whereas there is one publicly funded system of education in Alberta whose primary mandate is to provide education programs to students through its two dimensions, the public schools and the separate schools; and
>
> Whereas the education community in making decisions should consider the diverse nature and heritage of society in Alberta within the context of its common values and beliefs. . .

Apparently, no other provincial legislation contains preambular statements of principles with respect to the rights, interests, and responsibilities of parents, the government, and children with respect to the elementary and secondary education of children.

Eligibility Criteria for Independent Schools

British Columbia's *Independent School Act* requires the "authority" operating an independent school to be either

> (a) a society incorporated under the *Society Act*,
> (b) a corporation incorporated under the *Company Act* or a private Act, or
> (c) a person designated, by regulation, as an authority that operates or intends to operate an independent school,

and to have enrolled 10 or more school age students in their educational program.

Alberta's *School Act*, which also applies to private schools, defines a "school" as

> a structured learning environment through which an education program is offered to a student by
> (i) a board,
> (ii) an operator of a private school,
> (iii) an early childhood services program private operator,
> (iv) a parent giving a home education program, or
> (v) the Minister,

and a "private school" as "a school registered under section 22" of the Act. There is no minimum number of students for *registered* private schools, but *accredited* schools must have enrolled a minimum of 7 students from 2 or more families.

Manitoba's *Education Administration Act* defines a "private school" as

> any school, other than a public school, which provides a curriculum and a standard of education equivalent to that provided by the public schools, but does not include any home or place to which clause 262(b) of The Public Schools Act applies.[1]

Ontario's *Education Act* defines a "private school" as

> an institution at which instruction is provided at any time between the hours of 9 a.m. and 4 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school courses of study and that is not a [public] school as defined in this section.

Reports, Statements, and Records

British Columbia and Ontario make general provisions in their acts requiring independent schools to furnish to the Department of Education, information requested by the Department (similar to subsection 361(1) of Saskatchewan's *Education Act*). Alberta's regulations contain the most detailed provisions with respect to information that schools are required to furnish, and of the required nature of and access to student records. The other three provinces make no provisions in legislation or regulations with respect to reports, statements, or records.

Questions, Discussions, Recommendations, and Understandings

Question (D.1)

What statements of principle, if any, should there be in the independent school regulations with respect to the rights, interests, and responsibilities of parents, the government, and children?

Discussion

Chapter III of the report is a discussion of guiding principles, many of which relate to the rights, interests, and responsibilities of parents, the government, and children with respect to education. While these principles appropriately appear in the body of this report, the Board does not recommend that these appear in the independent school regulations.

Recommendations

None.

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[1] Clause 262(b) applies to home-schooling.

Question (D.2)

What are the recommended eligibility criteria for the different categories of independent schools?

Discussion

Eligibility criteria relate to the generic structure and operation of a school. In considering this question, the Board noted that *The Education Act*, clause 2(ff), defines a public school in terms of its structure and operation; that *The Education Act*, section 33 specifies that public and separate boards of education are corporations; and that neither *The Education Act* nor the regulations specify a minimum size for a public or separate school.

The Board agreed that the organization that owns or operates each independent school should, like public boards of education, be incorporated in the province of Saskatchewan. This would provide the provincial government with a number of safeguards, including a direct record of ownership, separate from that of Revenue Canada, as well as requiring, under Saskatchewan's *Non-Profit Corporations Act*, an annual financial audit. Incorporation also provides many benefits to the organization that owns or operates the school, such as the joint-ownership of assets.

Then the Board was concerned about distinguishing an independent school from a home-schooling situation, without which distinction, the Department might, under recommendation (B.6.1), end up inspecting or supervising a large number of home-schooling situations. While the corporate structure of an independent school provided one distinction, the Board further agreed that each independent school board should comprise a minimum of *three* adults, representing *three* different family units, and have enroled pupils between the ages of 5 and 21 from a minimum of *two* different family units.[2]

Next, the Board agreed that, among other things, the Department could rightfully expect some indication of permanence before the Department should consider accrediting a registered independent school, namely, that the school had operated successfully for at least one full year.

Finally, parents must be able to make educational choices for their children based on information as complete as possible. Therefore, registered independent schools that are not accredited should be required to notify the parents of this fact. On the other hand, the operators of accredited independent schools -- whether an accredited school *per se*, an historical high school, or an alternative independent school -- may advertise that their schools are accredited by Saskatchewan Education.

Recommendations

(D.2.1) *That each independent school must be owned or operated by a body corporate, incorporated in the province of Saskatchewan.*

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[2] Public schools currently provide education to children from ages 5 to 21.

(D.2.2) *That each independent school must have a board analogous to a public board of education, which exercises powers similar to a public board of education.*

(D.2.3) *That each independent school board must comprise a minimum of three adults, representing three different family units, appropriately selected by the organization that owns or operates the independent school.*

(D.2.4) *That each independent school must have enroled pupils between the ages of 5 and 21 from a minimum of two different family units.*

(D.2.5) *That a registered independent school must have operated successfully for at least one full year before it can become an accredited school per se.*

(D.2.6) *That the operator of each registered independent schools must notify the parents of the pupils in the school that the school is not accredited by Saskatchewan Education, and of the reasons why the school is not accredited by Saskatchewan Education.*

(D.2.7) *That the operator of each accredited independent school may advertise that its school is accredited by Saskatchewan Education.*

Understandings

While a church that is operating a school as an integral part of its church ministry would be required to incorporate, it would not be required to incorporate its school separately from the church.

An independent school could be owned or operated by a for-profit corporation, but unlike a non-profit corporation, would not enjoy a exemption from municipal property taxes.

Independent school boards will exercise powers similar, though not identical, to those of public boards of education. See Tables 8.1 and 8.2 for the recommended duties and powers of independent school boards, arising from the recommendations of this report.

Question (D.3)

What additional recommendations should be made with respect to the relationship between the Department of Education and independent schools:
(a) *administration of independent school policies?*
(b) *accountability of independent schools to the Department?*
(e) *services provided by the Department to independent schools?*
(d) *reporting requirements?*
(e) *pupil records?*

Discussion

This question only addresses *additional* aspects of the relationship between the Department of Education and independent schools that have not been addressed by other questions.

The Board agreed that independent schools should be required to maintain confidential pupil records of a form and in a manner consistent with Saskatchewan's public schools, as prescribed in *The Education Act*, section 146.

Then the Board considered who should be responsible for informing directors of education of the enrolment of children of compulsory school age in independent schools. *The Education Act*, sections 155 and 156, requires, in essence, that children between the ages of 7 and 16 shall either attend a public (or a separate) school, an independent school, or a program of instruction approved by the director or superintendent at home or elsewhere. For those parents or guardians who do not exercise their children's right in subsection 144(1) to attend a public (or a separate) school, while directors of education are no longer responsible for providing their children's education, they are still responsible for ensuring that all the children residing in their school division are receiving an education in an independent school or at home. As the Supreme Court of Canada ruled in the *Jones* case, *The Education Act* provides for compulsory education but not education in a compulsory way.[3]

While some independent school parents may prefer to see themselves as "consumers" of education, choosing among alternative educational programs available for their children, and may conscientiously object, like Larry Jones, having to apply for their children's exemption from attendance at a public (or a separate) school, the Supreme Court of Canada has ruled that parents should construe this, not as a device to limit parents' right to provide for the education of their children in accordance with their religious convictions, but as a legitimate administrative device to protect the compelling interest of the state in the education of children. It was sufficient to protect the parents against the disregard of their rights or procedural unfairness at the point of application.

Directors of education need to know which children, residing in their school division, are enroled in an independent school, not only to know that they are no longer directly responsible for providing an education to these children, but also to plan their division's educational budget and staffing arrangements for the next year.

In the context of the above information, the Board agreed that parents should be responsible for informing directors of education of the enrolment of their children of compulsory school age in an independent school. The remainder of the Board's discussion with respect to this issue focused on how to inform directors in a manner as administratively convenient as possible to parents, independent schools, and directors of education. While agreeing that parents retained the ultimate responsibility for informing directors, the Board also concurred that directors could be informed in one of a number of ways:

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[3] See Chapter III, pp. 52-55 above. While a director of education is not responsible for supervising independent schools, whether he/she is responsible for supervising home-schooling programs remains an open question.

- In a written letter from the parent or guardian to the director of education;
- By the students themselves, say at the end of grade 8, that they would be enroling in an historical high school next year;
- By means of a record release form; or
- On a list of students submitted by the principal of the independent school to the director of education -- a separate list for the director of each school division.

It should be noted that the Department of Education, itself, does not maintain individual pupil records. The Department only maintains records of students enroled in secondary level (grades 10, 11, and 12) for the purpose of granting secondary level standing.

It should further be noted that, where parents or guardians reside within the geographical boundaries of both a public and separate school division, members of the majority faith (i.e. non-Catholics) are deemed to reside in the public school division, even if their children are presently attending a separate school. Whether a person is a member of the majority or minority faith is a matter of individual conscience.

Finally, the Board considered how much notice and to whom independent school boards should be required to give notice, if and when they decided to close their school. Public boards of education are presently required to give at least six months notice to the board of trustees or the local school advisory committee of the school district in which the school is situated.

The Board agreed that an independent school board should not be permitted to close its school down overnight. Operating an independent school was a serious business. Having started its school, an independent school board had some continuing obligation to the parents of the children enroled in the school. On the other hand, the Board recognized that independent schools boards generally closed their schools for financial reasons. The state should not require an independent school board to continue operating at a loss, month-by-month, for as long as six months. As a balance, the Board agreed that independent schools boards should be required to give at least 30 days notice to the affected parties: the Minister of Education, the local director of education, and the parents or guardians of the children enroled in the school.

Recommendations

(D.3.1) *That each independent school must maintain confidential pupil records of a form and in a manner consistent with Saskatchewan's public schools.*

(D.3.2) *That each parent or guardian of a child of compulsory school age who enrols that child in an independent school be responsible for providing notification of the enrolment, in writing, to the principal of the public school in which that child was enroled, or to the director of the school division in which that child resides.*

(D.3.3) *That an independent school board that decides to close its school must give 30 days notice, in writing, of its intention to close its school to:*
(a) the Minister of Education;
(b) the director of education of the school division in which the independent school is situated; and
(c) the parent or guardian of each pupil enroled in its school.

(D.3.4) *That the Minister remove Letters of Eligibility to Teach and/or school registrations where criteria are not being met, subject to the principles of fundamental justice.*

Understandings

In its discussion of recommendations (D.3.2), the Board may not have exhausted all possible alternatives. The key concern is that directors of education have some *written* record where each student of compulsory school age residing in their division is attending school.

Where possible, independent school boards should give more than 30 days notice. Independent schools will also consult with parents and guardians with respect to the continuing education of their children.

The Minister will actively enforce the recommended criteria for the different categories of schools, and will take immediate and appropriate action in situations where these criteria are not being met.

Question (D.4)

What recommendations, if any, should be made with respect to the settlement of disputes arising from, say, registration, school accreditation, teacher certification, or suspension of students from independent schools?

Discussion

Both the curriculum, instruction, and evaluation committee and the teacher education, certification, and standards committee discussed this issue, since the recommendations arising from these committees vested considerable power in the Department's supervisory official for independent schools with respect to the goals of education of independent schools, the approval of programs at the elementary and middle levels, the approval of courses at the secondary level, the certification of teachers in independent schools, and the Letter of Eligibility to Teach in an independent school. In addition, the Department's supervisory official would presumably play a major role with respect to the registration and accreditation of independent schools.

While the independent school representatives recognized that somebody had to make decisions of this nature, this also posed considerable risks for independent schools if such a person was not sensitive, particularly to the religious or philosophical concerns of independent schools. In accordance with principle #13 in Chapter III, could independent schools be assured that such decisions would involve "fundamental justice"? Substantive rights like "freedom of conscience and religion" counted for little without effective procedural rights such as "fundamental justice".

Accordingly, the representatives of the Saskatchewan Association of Independent Church Schools presented a written proposal to the Board for an appeal mechanism for certain sensitive decisions of the Department's supervisory official. The proposal addressed the following issues:

- Whether appeals should be considered by a standing board, constituted on an ongoing basis, or a tribunal, re-constituted every time a particular dispute arose;
- Whether an appeal process should be permanently in place, or for a transitional period during the implementation of the Board's recommendations;
- What the membership of a board or tribunal might be;
- Who could initiate an appeal process;
- Which issues could be brought before the board or tribunal;
- Whether the Minister of Education would have discretion with respect to whether a particular issue would be considered by the board or tribunal;
- Which party should have the onus of proof in particular situations;
- Whether the board or tribunal would have the power of decision or the power of recommendation to the Minister; and
- Whether and what kinds of decisions would be appealable to the courts, or to the Minister.

The arguments in favour of an appeal process of some kind were the following:

- The Board was recommending a number of new and untried procedures with few historical precedents, and was asking a large degree of trust of independent schools. An appeal board or tribunal, at least on an interim basis, would provide independent schools with a safeguard.

- Among other things, independent schools were concerned, say, that secondary level courses that were academically credible but that reflected a minority rather than society's majoritarian philosophical perspective might not receive a fair hearing. Without an appeal mechanism, could independent schools be confident that flexibility really existed in provincial curriculum policy?

- Public schools were creations of *The Education Act*. Independent schools, on the other hand, were creations of the denominations, churches, or societies that formed them. Simply since public and independent schools were, in the first instance, created under different authorities, fundamental justice in the regulation of independent schools by the Minister required an appeal process of some kind in order to protect the church from the state.

- *The Education Act* provided for a number of advisory, appeal, referral, and review processes that protected the interests of those involved in public education.[4] Independent schools should have something similar.

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[4] See Table 8.3.

- The Department's supervisory official would be performing many of the functions of a director of education. All of a director's decisions were ultimately appealable to the local board of education to which the director was accountable, but the Department's supervisory official was accountable, not to independent school boards, but to the Minister of Education. School trustees could remove a director of education with whom they found fault; independent school boards could not similarly remove the Department's supervisory official for independent schools.

- Without an explicit appeal process, the implicit appeal process would become the courts. The work of the Department's supervisory official would be difficult enough without always wondering whether he/she would end up in court. An explicit appeal process would become a safeguard for him or her as well.

The public education representatives agreed with the principle of "fundamental justice". Since 1978, "fundamental justice" had been one of the foundational principles in *The Education Act*, as it was consolidated and redrafted in that year. However, they made the following points in response to the independent schools' proposal:

- They were not convinced that appropriate appeal mechanisms either (1) did not presently exist, or (2) did not presently work. For example, BTEC was, among other things, an appeal board with respect to teacher certification. Such existing structures should be given the opportunity to work for independent schools, too.

- They could not agree with the scope of the independent schools' proposal. Maybe an explicit appeal process should exist for things like school registration that concerned the economic survival of an independent school, but certainly not for decisions like the approval of courses and programs. In general, decisions of appeal boards and tribunals were only appealable to the courts on points of law. In *The Education Act*, one example of this was the board of reference.

- Decisions of the Department's supervisory official for independent schools could be reviewed by the Minister.

- The term "appeal board" had connotations that were too legalistic. A term like "mediation board" or "referral board" would be more appropriate. On an appeal board, people would be more likely to take extreme positions; on a mediation or referral board, people would be more likely to try to work things out.

- While public education representatives could agree to a mediation or referral process on an interim basis during the implementation phase, they could not agree to the establishment of of a permanent process without greater demonstration of the need for such a process.

- Independent schools always seemed to presume that Department officials would be biased in administering independent schools regulations and policies. The Supreme Court had told Larry Jones not to presume such bias.

- Where legislation gives the Minister discretionary authority, his decisions are not normally appealable to the courts. The courts do not generally have the power to overturn discretionary decisions of the Minister or his officials.

Professor McConnell concurred with and expanded upon the latter point. Where legislation gives the Minister broad and unfettered discretion, by use of language such as "as he sees fit" or "in the Minister's opinion", the very breadth of the delegation of power by the legislature makes it difficult for the courts to review or ultimately reverse a Minister's decisions.

On the other hand, where the legislation deals with standards, the courts can review either (1) whether the standards are appropriate, or (2) whether a person has met the standards, if these are deemed appropriate. For example, the courts might consider whether the effect, if not the purpose, of teacher certification standards or high school diploma standards constituted discrimination on the basis of religion.

Furthermore, the courts have also said that too broad a discretion, granted in legislation to the Minister, is unmanageable, and represents, in effect, an abdication of legislative power. Too broad a delegation of power is impermissible because, under the rule of law, persons adversely affected by an administrative decision should be reasonably aware of how they have been affected by that administrative decision. Persons cannot be left completely in the dark, i.e. completely at the Minister's discretion.[5]

At this point, the Advisory Board searched for common ground with respect to the implementation of the Board's recommendations and how to deal with any concerns that the independent schools might have as the Board's recommendations were implemented. The Board agreed upon the following:

- That existing appeal and review mechanisms, such as BTEC, should be given the opportunity to work for independent schools, too.[6]

- That a scaled-down version of the present Advisory Board, named the Independent Schools Review Board, should continue to exist during the implementation of the present Board's recommendations in order to review, as called upon, any disputes arising from the administration of independent school policies. After three years, the Minister might extend the life of the Independent Schools Review Board.

- Like the present Advisory Board, the Review Board would have the power to make recommendations to the Minister.

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[5] The relevant cases are *Joy Oil* v. *King* (1963) 41 Dominion Law Reports (2d) 291 (Ontario Court of Appeal); *R.* v. *Sandler* (1971) 21 Dominion Law Reports (3d) 286 (Ontario Court of Appeal); *Brant Dairy* v. *Milk Commission of Ontario* (1973) 30 Dominion Law Reports (3d) 559 (Supreme Court of Canada); and *Ramawad* v. *Minister of Immigration* [1978] 2 Supreme Court Reports 275.

[6] For this reason, the Department's supervisory offical will simply transmit, with an opinion, an application for a Probationary "B" Certificate to the certificate issuing official.

Recommendations

(D.4.1) *That a scaled-down version of the present Advisory Board, named the Independent Schools Review Board, should continue to exist for at least three years during the implementation of the present Board's recommendations, in order to review, as called upon, any disputes arising from the administration of independent school policies.*

(D.4.2) *That all groups represented on the present Advisory Board also be represented on the Independent Schools Review Board.*

(D.4.3) *That the Independent Schools Review Board have the power to make recommendations to the Minister of Education with respect to administrative policies, procedures, or decisions that are referred to it.*

(D.4.4) *That the Independent Schools Review Board monitor on a regular basis the issuance of Probationary "B" Teaching Certificates and Letters of Eligibility to Teach.*

(D.4.5) *That, after three years, the Minister may extend the life of the Independent Schools Review Board.*

Understandings

A scaled-down version of the present Advisory Board would comprise 15 members, as follows:

- One representative from each of the SSTA, STF, LEADS, the University of Saskatchewan College of Education, and the University of Regina, Faculty of Education;
- One representative from each of the SAPHS, SAICS, the Seventh-day Adventist schools, the Church of God in Christ (Mennonite) schools, and the Society schools;
- One representative from the Universities of Saskatchewan and Regina (Registrar), one from SIAST (Registrar), and one from Saskatchewan Employers/Apprenticeship and Training;
- One representative from the Department of Education;
- One chairperson, appointed by the Minister, who is not a representative of any of the above groups.

Question (D.5)

What recommendations, if any, should be made with respect to the access of pupils to independent schools?

Discussion

According to *The Saskatchewan Human Rights Code*, religiously-based independent schools as well as some other types of independent schools, may restrict access to members of their own group. See principle #18 in Chapter III.

Alternative schools deliver a qualitatively different educational program to a qualitatively different target group, which may require qualitatively different instruction and facilities. Hence, these schools are distinguished from the accredited schools *per se* and from the historical high schools, not only by *The Education Regulations*, clauses 61(b) and (o), under which they receive funding, but also by *access*. Students are generally placed by public boards of education, Saskatchewan Social Services, Saskatchewan Justice, or the (federal) Department of Indian Affairs. Special education co-ordinators located in the regional offices of the Department must concur with these placements in order for the schools to receive funding under clauses 61(b) and 61(o).

Recommendations

(D.5.1) *That any independent school may follow a restrictive policy with respect to enrolment on the basis of sex, creed, religion, or physical disability, where the school enrols persons of a particular sex, creed, or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled.*

(D.5.2) *That students in alternative independent schools must generally be placed by school boards, Saskatchewan Social Services, Saskatchewan Justice, or the Department of Indian Affairs, with the concurrence of the Special Education Branch of Saskatchewan Education.*

Understandings

Recommendation (D.5.1) is a direct quotation from *The Saskatchewan Human Rights Code*.

Question (D.6)

What additional recommendations should the Board make to other stakeholder groups represented on the Board relative to their relationship with independent schools?

Discussion

The Board agreed that the post-secondary/employment sector should acknowledge the existence of independent schools.

Recommendations

None.

Table 8.1

Suggested Duties of Independent School Boards[7]

An independent school board shall:

A. Teacher Education, Certification, and Standards

- (Registered schools) Employ teachers that hold either a valid Saskatchewan teacher's certificate or Letter of Eligibility To Teach. [(A.1.1) and (A.1.2)]
- (Accredited schools) Employ teachers that hold a valid Saskatchewan teacher's certificate. [(A.1.1) and (A.1.2)]

B. Curriculum, Instruction, and Evaluation

- Operate full-time programs consistent with the spirit of *The Education Act*, sections 164 to 168. [(B.1.1) to (B.1.3)]
- (Registered schools) Have goals of education that are not inconsistent with the goals of education for Saskatchewan. [(B.2.1), (B.2.3), and (B.2.4)]
- (Accredited schools) Subscribe to the goals of education for Saskatchewan. [(B.2.2), (B.2.3), and (B.2.4)]
- (Registered schools) Provide instruction in the seven required areas of study, appropriate for the age and ability of their pupils, comparable in quality to that of the public schools, and consistent with generally accepted teaching principles with respect to academic content and teaching pedagogy. [(B.3.1), and sections 176 and 186]
- (Accredited schools) Conform to provincial curriculum policy in respect of the required areas of study, common essential learnings, locally-determined options, adaptive dimension, and time and credit allocations. [(B.3.2), and sections 176 and 186]

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[7] Recommendations (D.2.1) and (D.2.2) are the foundational recommendations, that "each independent school must be owned or operated by a body corporate, incorporated in the province of Saskatchewan" and that "each independent school must have a board analogous to a public board of education, which exercises powers similar to a public board of education". As a legal person, an independent school has "the rights, powers, and privileges of a natural person". [*The Non-Profit Corporations Act*, subsection 15(1).] As a corporate body, the independent school is also subject to the Act under which it is incorporated, its incorporating documents, and its constitution and by-laws, which duties or restrictions are not listed in this table.

- Authorize and approve the courses of instruction which constitute the instructional program of the independent school. [*The Education Act*, clause 91(j) and section 177][8]
- (Alternative schools) Conform to provincial curriculum policy in respect of alternative education. [(B.3.3)]
- Abide by section 180 of *The Education Act* in respect of the language of instruction. [(B.3.7)]
- (Registered schools) Subject to the regulations, be subject to any inspection that the Minister considers necessary. [(B.6.1), (B.6.2), and subsection 361(2)]
- (Accredited schools) Subject to the regulations, be subject to any supervision that the Minister considers necessary. [(B.6.1), (B.6.3), and (B.6.4)]

C. Student/Teacher Needs

- Provide and maintain school accommodation, equipment, and facilities that meet construction, health, and safety standards as required by national, provincial, and local authorities. [(C.1.1), and clause 91(d)]
- Upon application for registration of their school, provide certification that their facilities meet the above construction, health, and safety standards. [(C.1.2)]

D. Other

- Be comprised of a minimum of three adults, representing a minimum of three different family units, appropriately selected by the organization that owns or operates the independent school. [(D.2.3)]
- Have enroled pupils between the ages of 5 and 21 from a minimum of two different family units. [(D.2.4)]
- (Registered schools) Notify the parents of pupils in the school that the school is not accredited by Saskatchewan Education, and of the reasons why the school is not accredited by Saskatchewan Education. [(D.2.6)]
- Submit applications to the Minister of Education for registration of their school. [(D.3)]
- Appoint a principal or director of education for the independent school, who shall be designated the chief executive officer of the independent school. [sections 106-107]

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[8] References to sections of *The Education Act* in this table are primarily for information purposes. Such sections do not necessarily apply to independent schools.

Table 8.2

Suggested Powers of Independent School Boards[9]

An independent school board may:

A. Teacher Education, Certification, and Standards

- Restrict the employment of teachers to individuals sharing the faith and practice as the parent organization that owns or operates the independent school. [(A.1.2)]
- Apply for Probationary Teaching Certificates on behalf of a teacher. [(A.2.4)]
- (Religiously-based registered schools) Apply for Letters of Eligibility to Teach on behalf of a teacher. [(A.3.2)]
- Enter into written contracts of employment with teachers. [*The Education Act*, clause 91(x)][10]
- Participate in programs approved by the Minister for the education and training of teachers. [(A.4.1), (B.7.1), and clause 91(y)]
- Engage and dismiss teachers. [section 197]
- Prescribe the functions and duties of teachers. [section 227]

B. Curriculum, Instruction, and Evaluation

- Submit courses to the Department for approval as locally developed courses of study, designated 10L, 20L, or 30L. [(B.3.4) and subsection 176(2)]
- Submit courses to the Department for approval as regular courses originating from independent schools, designated 10I, 20I, and 30I. [(B.3.5)]

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[9] In contrast to "duties", which are obligatory, "powers" are permissive and not mandatory. Since independent schools are legal persons and possess "the rights, powers, and privileges of a natural person", it is not generally necessary to specify in legislation or in regulation all the powers of an independent school board as laid out in this table. Accordingly, many of the suggested powers in this table are listed for information purposes only.

[10] References to sections of *The Education Act* in this table are primarily for information purposes. Such sections do not necessarily apply to independent schools.

- Submit programs at the elementary and middle levels for approval to the Department's supervisory official for independent schools. [(B.3.6)]

- Submit requests for additions to the recommended materials list for independent schools. [(B.4)]

- (Accredited schools) With the approval of the Department, arrange for supervision by a local director or superintendent, or a person similarly qualified. [(B.6.4)]

- During the implementation phase of a new provincial curriculum, arrange for the attendance of their teachers at in-service seminars associated with the new curriculum. [(B.9.2)]

- Authorize the organization of cultural and athletic activities, youth travel, outdoor education and similar activities as features of the educational program of the school. [section 179]

- Provide non-credit religious instruction in the religious doctrine or creed of the parent body operating the independent school for a period not exceeding two and one-half hours per week. [(B.5) and section 181(1)]

- Provide courses of vocational education and occupational training. [section 183]

C. Student/Teacher Needs

- Negotiate arrangements with public boards of education, including fee-for-service arrangements, for the provision of services such as bus transportation and driver education to pupils in independent schools. [(C.2)]

- Provide educational services on behalf of pupils with disabilities. [subsection 184(2)]

- Make provision for special programs for pupils of superior natural ability or exceptional talent. [section 185]

- Make provision for the education and training, in the elements of safety and competence in the operation of motor vehicles, for pupils who are eligible. [section 187]

- Employ one or more teachers qualified in guidance to provide specialized services to pupils and such counselling as will enable them to plan, select and pursue studies for their educational and vocational advancement. [section 189]

- Furnish transportation services to pupils to and from school. [clauses 91(k) and subsection 192(1)]

D. Other

- (Accredited schools) Advertise that their school is accredited by Saskatchewan Education. [(D.2.7)]

- Submit applications for accreditation of their school. [(D.3)]

- Follow a restrictive policy with respect to enrolment on the basis of sex, creed, or religion where the school enrols persons of a particular sex, creed, or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled. [(D.5.1)]

- Establish rules of order for meetings of the board. [sections 83-86]

- Prescribe the powers and duties of the principal or director of the independent school. [sections 108 and 175]

- Appoint a principal and such number of teachers as the board considers necessary and appropriate to conduct the program of instruction it has approved. [subsection 174(1)]

- Prescribe procedures with respect to the design, maintenance and supervision of school accommodation for the purpose of maintaining satisfactory standards of comfort, safety and sanitation for the pupils and other users of such accommodation. [clause 91(v)]

- Insure and keep insured the school buildings and the equipment, furnishings and property of the school. [clause 91(aa)]

- Employ, or retain the services of, such ancillary personnel as may be considered necessary to administer the policies and programs of the board. [clause 92(a) and sections 112-115]

- Provide for such meetings, seminars, workshops and conventions of members of the board and teachers as may be considered advisable for the purposes of educational planning and development. [clause 92(l)]

- Grant leave of absence to teachers and other employees of the board. [clause 92(n)]

- Prepare an administrative manual in such form and content as it considers appropriate to its purposes. [sections 104 and 115]

- Prescribe the duties of the chairperson of the board. [section 105]

- Establish procedures for the settlement of differences or conflicts in the relationship of a pupil to a school. [section 147]

- Prescribe the duties of pupils in the school. [section 150]

- Make provision for the general discipline of pupils in the school. [sections 151-154]

- Establish the procedures and standards to be applied in evaluation of the progress of pupils and in making promotions. [clause 175(j)]

Table 8.3

Existing Advisory, Appeal, Referral, and Review Processes With Respect to the Public Educational System

Board/Committee	Nature of Process	Membership	Parties	Reports, Appeals
Ministerial Committees [Govt. Organization Act, section 16]	To assist the Minister in exercising any powers or performing any duties pursuant to The Education Act.	Appointed by the Minister for a specific period and for a specific purpose.	N/A	Report to the Minister.
Advisory Committees [Education Act, clause 10(1)(o)]	To advise the Minister on matters relating to the development of education in the province.	Appointed by the Minister from among the universities, SSTA, STF, voluntary associations, and public at large.	N/A	Report to the Minister.
Inquiries [ss. 10.01(1) to (3)]	To inquire into any appeal, complaint, difference, or disagreement arising from the decision of a board of education, director, superintendent, or other school board official.	One or more persons appointed by the Minister.	N/A	Report to the Minister.
Educational Council [ss. 12(1) to 14]	To advise the Minister on matters referred to it by the Minister.	No fewer than five persons, at least two of whom shall be Roman Catholic, appointed for two year terms.	N/A	Advice and recommendations to the Minister.
Educational Boundaries Commission [ss. 15(1) to 17]	To consider matters referred to it by the Minister with respect to the boundaries of school divisions.	At least three members, appointed by Cabinet, for three year terms.	N/A	Advice and recommendations to the Minister.
Board of Review [ss. 113 and 114]	At discretion of the Minister, an investigation requested by a director or other board of education official upon termination of contract.	Tribunal: one person nominated by each party, chairperson nominated by the Minister.	Board official, and board of education	Findings reported to both parties and to the Minister.
Local school advisory committees [ss. 137(1) to 142]	To advise the board of education; terms of reference defined in the bylaws of the board.	As prescribed in the the bylaws of the board of education.	N/A	Advice and recommendations to board.
Mediation of disputes involving pupils [s. 147]	Investigation and mediation of conflicts in the relationship of a pupil to a school.	Procedures as established by the board of education for this purpose.	Parent or guardian, and board of education.	As established by the board of education.
Referral to committee [s. 152]	Study, diagnosis, or investigation initiated by a principal, where a pupil fails to respond to his duties as a pupil.	Staff members and consultants.	N/A	Report to the principal.

Board/Committee	Nature of Process	Membership	Parties	Reports, Appeals
Suspension of pupils [s. 153(6) to (11)]	Investigation with respect to the suspension of a pupil.	Board members, officials, and consultants appointed by the board.	Principal and pupil	Decision reported to board; changeable by board.
Board of reference [ss. 212(1) to 226]	Investigation requested by a teacher upon termination of contract; no ministerial discretion.	Tribunal: one person nominated by each party, chairperson nominated by both parties.	Teacher and board of education	Decision appealable to courts, under certain circumstances.
Educational Relations Board [ss. 234(1) to 264]	Upon request of a bargaining committee, facilitating mediation, conciliation, or arbitration of provincial or local collective bargaining disputes.	Two members nominated by STF, two by SSTA, and chairperson by both parties.	STF (or local associations) and Govt./SSTA (or local boards).	Reports to both parties.
Teacher Classification Board [ss. 265(1) to 266]	Request by a teacher with respect to that teacher's inclusion in a class of teachers.	Two by SSTA, two by STF, and two (including the chairperson) by the Minister.	Teacher and board of education.	Decision binding on both teacher and board.
Board of Teacher Education and Certification [ss. 267(1) to 271]	Review of the certification of any person whose status with respect to qualifications is referred to it.	One by each university, two by STF, two by SSTA, three from Dept. by Minister, and up to two more by Minister.	N/A	Recommendation to the Minister.

IX. Conclusion

Independent schools have always existed in Saskatchewan, and have been established at different times for different reasons. For example, the eight historical high schools were established in the early 1900s as "schools of necessity" at a time when public high schools were not always available, not as a complaint or in competition to the public schools, but as a valuable educational alternative, providing quality education with a spiritual dimension. These schools are now

> permanent fixtures in Saskatchewan. Their traditions and place in the education practice of this province are deeply rooted. They are well-respected within education circles and it is not uncommon for some of these schools to attract significant numbers of out-of-province students to their campuses.[1]

The Seventh-day Adventists started their first school in Saskatchewan in 1924 as a "school of diversity". While they supported the public education philosophy of providing the very best education possible for the children of Saskatchewan, they nonetheless felt, in the context of their unique beliefs, that their children's needs could not be met within the public education system. They desired a spiritual foundation, not just a spiritual dimension, to their children's entire educational experience.

Then between 1975 and 1985, as part of a nation-wide phenomenon, some 30 new independent schools, mostly evangelical Christian schools, were started in Saskatchewan as "schools of protest".[2] The parents who started these schools were not looking for help with religious instruction. Rather, some of these parents became frustrated in dealing with more and more influences in the schools that, in their opinion, worked against what they were trying to do in the home.

This latest generation of independent schools were not, of course, the first "schools of protest" in Canada. While the public educational system was being established in the United Province of Canada after 1841, the Roman Catholic separate schools in Ontario and the Protestant dissentient schools in Quebec were the first schools of protest, which protests gave rise to major political issues and compromises, including section 93 of *The Constitution Act*, 1867. As a result, in Ontario, Quebec, Alberta, Saskatchewan, and Newfoundland, Roman Catholic schools are "public" schools, but in other provinces, they remain independent schools.

Independent schools clearly have the right to exist in a Western liberal democracy such as Canada, and parents have the right to provide for the education of their children in accordance with their religious convictions by enroling them in independent schools. On the other hand, the government has a compelling interest and responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan in order to protect the interests of the public at large and the children enroled in independent schools, themselves. While independent schools have always existed in Saskatchewan, such a legislative and regulatory framework has not been fully developed until now, particularly in the light of the new *Charter of Rights and Freedoms*, 1982. In particular, the Board has dealt with the thorny issue of who should be responsible for inspection and supervision of independent schools and on the basis of what criteria.

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[1] Gordon Dirks, *Review of Private Schooling in Saskatchewan* (September 1987), p. 22.

[2] The three phrases, "schools of necessity", "schools of diversity", and "schools of protest", come from Robert Stamp, "A History of Private Schools in Ontario", in Bernard J. Shapiro, *The Report of the Commission on Private Schools in Ontario* (October 1985), pp. 193-207.

Clearly, the Minister has established the Advisory Board at a very unique time in Saskatchewan history, not only because of *The Charter of Rights and Freedoms*, but also because the Department of Education is in the midst of implementing a major curriculum reform, namely Core Curriculum, in the province's public and separate schools, and because the Department is in the process of establishing a fransaskois component to the Saskatchewan school system. Also, professional educators -- in public, separate, and independent schools -- are facing new demands in delivering services to special needs students whose education is "at risk", but who do not fit into the traditional categories of disabled students.

Throughout the course of its work, the Minister's Advisory Board made no attempt to priorize the interests of the children enroled in independent schools, their parents, and the public at large; rather, the Board attempted to balance the interests of these three groups. The proposed relationship between the Department of Education and independent schools recognizes freedom of conscience and religion in education as well as fundamental justice. In accordance with the *Jones* decision, independent schools and parents who enrol their children in independent schools must apply for exemptions, at appropriate points, from the regular scheme of education in the province. The Department will consider these applications recognizing freedom of conscience and religion in education, the rights of children, the rights of parents, the compelling interest of the state in education, and fundamental justice for all.

Insofar as the Board is aware, the Minister's Advisory Board on Independent Schools has examined the issues surrounding independent schools in a more comprehensive way, involving all the major partners in the educational system, than any other province. Within its mandate, the Board has addressed all questions raised both by the Minister and by the organizations represented on the Board. Accordingly, if the Minister implements these recommendations, then Saskatchewan will have the most comprehensive legal framework governing the operation of independent schools of any province, with the possible exception of Quebec.

From the point of view of independent schools, the Board's recommendations involve new responsibilities and requirements, but they also provide new opportunities. From the point of view of the Department, they involve new responsibilities. If the Minister implements these recommendations, then Saskatchewan will be the only province (save Quebec) in which teachers in *registered* independent schools will be required to hold either a valid provincial teacher's certificate or a Letter of Eligibility to Teach. Saskatchewan will also be the only province in which the Department will be supervising *accredited* independent schools on an ongoing basis, rather than evaluating them on a periodic basis.

The Government of Saskatchewan has a primary responsibility for the public education system in its two dimensions, the public schools and the separate schools. But for the sake of the children in independent schools, both the independent schools themselves and the Minister of Education have the interest in assuming these additional responsibilities as well.

Glossary

(The following definitions are specific to this report. While they generally correspond to common usage in the context of Saskatchewan's public education system, they do not always do so. For more information, refer to the pages in this report which appear after each definition. All *acronyms* do correspond to common usage in the context of the Saskatchewan education scene.)

Accredited independent school: An independent school that has received a specific Departmental sanction of its educational program, conferring, among other things, the eligibility of its pupils for secondary level standing. The Department recognizes the school as providing its pupils more than simply a legitimate exemption from attendance at a public or separate school. The recommended criteria for accreditation are laid out in summary form in Table 2. [14-15, 75-78]

Accredited teacher: A teacher in either a public, separate, or independent school who has been granted the responsibility for determining 100 percent of the final mark or standing of his/her students in a specified Grade 12 (level 30) subject or subjects. [129, 140-141]

Adaptive dimension: One of the four major components of Core Curriculum. This component provides flexibility within the school program to enable schools and teachers to individualize instruction in order to meet the variety of students' needs. [48, 107, 147]

Adult student: As defined in *The Education Regulations*, clause 2(a), "a person who is at least 18 years of age and who has been out of [public] school for at least one year." [130]

Alternative school: A school providing an educational program to special needs students, who require a qualitatively different educational experience which can not be met through the adaptive dimension of Core Curriculum. Alternative schools generally require qualitatively different instruction and facilities. They may be operated by either a public or an independent authority. The recommended criteria for alternative independent schools are laid out in summary form in Table 2. [14-15, 75-78, 108-109, 145-147]

Associate school: An independent school that has reached an agreement with a board of education to operate in association with that board. Generally speaking, the associate school offers an educational program with a specific religious or philosophical orientation not available in a local public school. The board of education receives provincial grants on behalf of the children in the associate school and employs the teachers in the school, while the local director of education exercises general supervision over the associate school and the work of the principal and teachers in the school. An associate school is defined in greater detail in Bernard J. Shapiro, *The Report of the Commission on Private Schools in Ontario* (October 1985), pp. 53-57; and in Gordon Dirks, *Review of Private Schooling in Saskatchewan* (September 1987), pp. 83-85.

BTEC: Board of Teacher Education and Certification. [79-82, 90-91, 169]

Certified teacher: A teacher holding a valid certificate of qualification to teach in a Saskatchewan school. [79-82, 97-101]

Common essential learnings: One of the four major components of Core Curriculum. The six common essential learnings -- communication, numeracy, critical and creative thinking, technological literacy, independent learning, and personal and social values and skills -- are to be incorporated into the required areas of study and other courses of study in an appropriate manner. [107, 118-121]

Compulsory school age: As defined in *The Education Act*, clause 2(g), "having attained the age of seven years but not having attained the age of 16 years". [133-134, 157]

Core Curriculum: The umbrella term for provincial curriculum policy in Saskatchewan, containing four major components -- required areas of study, common essential learnings, locally-determined options, and adaptive dimension -- and specifying time and credit allocations for each of the three levels of schooling. The essential concept behind Core Curriculum is that curriculum for each grade level and course of study should be planned with the entire educational experience in mind. [107-109]

Course: A well-defined area of study consisting of a statement of aims and objectives, scope and sequence of content, and the nature of the material to be studied in a given year at the secondary level (Grades 10 to 12).

Denominational school: A legal term that refers to religiously-based schools established as public authorities under section 93 of *The Constitution Act*, 1867, and corresponding sections of provincial acts such as section 17 of *The Saskatchewan Act*, 1905. In this broad sense, this encompasses both dissentient schools in Quebec and separate schools in Ontario, Alberta, and Saskatchewan. In a narrow sense, it refers specifically to Roman Catholic and Protestant schools in Montreal and Quebec City, and to denominational schools in Newfoundland. [36-37, 43-46]

Director of Education: As defined in *The Education Act*, clause 2(k) and sections 106 to 108, the chief executive officer of a public board of education. [104]

Dissentient school: A school established as a public authority in the province of Quebec, outside of Montreal and Quebec City, where the majority of the minority faith, either Protestant or Roman Catholic, decides to establish a dissentient school board coterminous with the an existing public school division or district. [179]

Elementary level: Grades 1 to 5. The time and credit allocations for the elementary level are laid out in Table 6.2. [137]

EPPAC: K-12 Education Program Policies Advisory Committee. [119-121]

Goals of education: In a general sense, a series of statements which define the knowledge, skills, or attitudes students will need in order to function in the world. As such, they represent a statement of beliefs to be used when making decisions about education, and provide direction for curriculum development and instruction. In a specific sense, the *Goals of Education for Saskatchewan*, adopted in 1985, are the official goals of education for Saskatchewan schools. [107, 114-116, 135-136]

Historical High School: A category of eight Saskatchewan high schools, which schools were established in the early 1900s as "schools of necessity" at a time when public high schools were not always available, and all of which schools are presently members of the Saskatchewan Association of Private High Schools. These schools are both accredited and funded in accordance with the existing *Educational Regulations*, sections 29 and 71, respectively. The specific criteria for a historical high school are laid out in summary form in Table 2. [14-15, 64-65, 75-78, 123-124]

Independent school: As defined in *The Education Act*, clause 2(s.1), "an institution: (i) in which instruction is provided to pupils of compulsory school age; and (ii) which is controlled and administered by a person that is not a public authority." [57-58, 75-78]

Inspection: As recommended by the Advisory Board, "subject to freedom of conscience and religion in education, and to the separate authorities of the church and the state, (a) involves checking compliance with the criteria for registered independent schools on an ongoing and collaborative basis; (b) involves observing any aspect of the educational program in an independent school in order to protect the interests of society at large with respect to the education of the children in the school; (c) may involve non-directive and unobtrusive supervision; (d) does not involve responsibility for the recruitment and dismissal of teachers, or the selection of programs in an independent school; and (e) will appreciate and recognize the distinct philosophical orientation of each independent school." [59, 125-128]

LEADS: League of Educational Administrators, Directors, and Superintendents

Locally-determined options: One of the four major components of Core Curriculum. These allow time for local or community program priorities, as determined by local boards of education, and which can be provided by utilizing provincially developed programs and courses or by implementing programs and courses developed at the local level. At the elementary and middle levels, time for locally-determined options may be gained by reducing the required areas of study by no more than 20% in any area. At the secondary level, time for locally-determined options is available through the use of credits in the elective categories. [107, 137-139]

Locally-developed course: A course at the secondary level that has been developed at the local level and approved by the Department of Education. Locally-developed courses may include up to 100 percent original content. Students may use locally-developed courses to meet the Required Courses of Study, the Specified Areas of Study, or the Unspecified Elective requirements for secondary level standing, but the province's two universities do not presently accept locally-developed courses in place of required subjects for admission to any school or college of the universities. They evaluate the acceptability of locally-developed courses as electives or in place of 30-level pre-requisites on an individual basis. [108, 118-121, 139]

Middle level: Grades 6 to 9. The time and credit allocations for the middle level are laid out in Table 6.3. [138]

Program: A well-defined area of study consisting of a statement of aims and objectives, scope and sequence of content, and the nature of the material to be studied in a given year at the elementary and middle levels (Grades 1 to 9).

Public school: A school established as a public authority under the provisions of *The Education Act*. In this broad sense, it encompasses public schools *per se*, separate schools, and the soon-to-be-established fransaskois schools in Saskatchewan. In the narrow sense, it refers only to the public schools *per se*, excluding separate and fransaskois schools. [36-37]

Pupil: As defined in *The Education Act*, clause 2(ee), a "person who is enrolled in a [public] school or registered independent school and includes any person who is of compulsory school age."

Registered independent school: In the broad sense, as defined in *The Education Act*, clause 2(ee.1), an "independent school registered pursuant to this Act and the regulations." In the narrow sense, this refers only to the specific category of registered independent schools that are not accredited by Saskatchewan Education. As such, the Department simply recognizes that a registered independent school is providing its pupils with a legitimate exemption from attendance at a public or separate school. The recommended criteria for registration are laid out in summary form in Table 2. [14-15, 75-78]

Required areas of study: One of the four major components of Core Curriculum. The seven required areas of study are language arts, mathematics, science, social studies, health education, arts education, and physical education. [107, 118-121, 137-139]

SAICS: Saskatchewan Association of Independent Church Schools. [124]

SAPHS: Saskatchewan Association of Private High Schools. [123-124]

SIAST: Saskatchewan Institute of Applied Science and Technology.

SSTA: Saskatchewan School Trustees Association.

STF: Saskatchewan Teachers' Federation. [81-82, 96]

Secondary level: Grades 10 to 12. The course requirements for secondary level standing are laid out in Table 6.4. [139]

Separate school: A school established as a public authority in the provinces of Ontario, Alberta, and Saskatchewan, where the majority of the minority faith, either Protestant or Roman Catholic, decides to establish a separate school board coterminous with the an existing public school division or district. [36-37, 43-36, 60-61, 165]

Society school: An independent school operated by a society of parents established explicitly for the purpose of operating an independent school. Society schools are generally interdenominational. [125]

Special needs student: A disabled student as set forth in section 49 of *The Education Regulations*, or a student who is "at risk" of not being able to achieve his/her potential via the options and/or modifications offered within regular education programs. [108, 145-147]

Superintendent of Education: As defined in *The Education Act*, clauses 2(nn) and 10(1)(h), a person appointed by the Minister of Education, who meets the qualifications of a director of education, who has been appointed for any area designated by the Minister and whose powers and duties have been prescribed by the Minister. [103, 125-128, 142-144]

Supervision: As recommended by the Advisory Board, "an ongoing process aimed at the improvement of instruction in a school, but (a) does not involve responsibility for the recruitment and dismissal of teachers, or the selection of programs in an independent school; and (b) will appreciate and recognize the distinct philosophical orientation of each independent school." [125-128]

Volume

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Saskatchewan
Education

Minister's Advisory Board on Independent Schools

Final Report to the Minister of Education

Volume II

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Appendix 1

Order in Council Establishing the Advisory Board

To The Honourable

August 2, 1989

The Lieutenant Governor In Council

The undersigned has the honour to report that:

1. Section 8.1 of *The Education Act* provides as follows:

> "8.1 The minister is responsible for all matters not by law assigned to any other minister, department, branch or agency of the Government of Saskatchewan relating to elementary, secondary and post-secondary education."

2. Section 16 of *The Government Organization Act* provides as follows:

> "16(1) For the purposes of exercising any of the powers or performimg any of the duties or functions conferred or imposed on him by or pursuant to this Act or any other law, a minister may appoint one or more committees for a specific period and for a specific purpose.
>
> (2) A minister shall obtain the approval of the Lieutenant Governor in Council before appointing an advisory committee for a period of longer than one year."

3. It is desirable and in the public interest to approve the appointment by the Minister of Education of the Independent Schools Advisory Board for a period of five years to advise the minister on the development, implementation, monitoring and review of a program for the inspection, regulation, and registration of independent schools.

The undersigned has the honour, therefore, to recommend that Your Honour's Order do issue pursuant to section 8.1 of *The Education Act* and section 16 of *The Government Organization Act* approving the appointment by the Minister of Education of the Independent Schools Advisory Board for a period of five years to advise the minister on the development, implementation, monitoring and review of a program for the inspection, regulation, and registration of independent schools.

Recommended by: Lorne Hepworth
Minister of Education

Approved by: Eric Berntson
A/ President of the Executive Council

Ordered by: Sylvia Fedoruk
Lieutenant Governor

Regina, Saskatchewan

Appendix 2

News Releases Relating to Independent Schools

March 13, 1987

Private School Study Announced

A study will look at private school issues in Saskatchewan, Education Minister Lorne Hepworth announced today.

The study will be conducted by Gordon Dirks, long-time Saskatchewan educator and former minister of social services.

At a cost of $30,000, the study will examine: quality of education in private schools; funding for private schools; taxation of private school property; home schooling; attendance requirements; parents' rights; and current and projected trends respecting private schools.

"We are commissioning this report because many parents, private school boards and their administrators have asked us to examine the issues surrounding these schools. As well, our provincial directors of education, who are responsible for students' attendance and instruction, are concerned about their responsibility as it relates to private schools," Hepworth said.

Dirks will consult with several educational groups throughout Saskatchewan and will submit his completed study by December 31, 1987.

Dirks holds a Master's degree in Educational Administration, has taught in the public school system in Eston and Regina, has served as school administrator in public schools in Guernsey and Lumsden, and was a university instructor in educational administration at the University of Regina. He is currently vice-president for development at the Canadian Theological Seminary/College in Regina.

June 27, 1988

Government Announces Policy on Private Schools

School property owned by non-profit groups in Saskatchewan will be exempt from payment of local property tax beginning this year.

The announcement was made today by Education Minister Lorne Hepworth as part of the provincial government's response to the Dirks Report on private schooling.

Hepworth noted that some private schools currently pay full or part taxes while others pay none. "The government recognizes that the present situation is unacceptable, and we think it is appropriate that these schools be exempt from tax in the same way as schools run by the public and separate boards."

In those cases where taxes are currently being paid, the government will provide grants in lieu of tax for two years to give municipal councils and school boards time to adjust to the new rules.

Hepworth also announced that the government will be setting up a system for the regulation and registration of private schools through Saskatchewan Education.

"This system will have three major benefits. It will give private schools a formal legal status. It will clarify the position of their pupils in terms of compulsory school attendance. And it will ensure that private schools maintain a high quality of education," he said.

Private high schools will be eligible for capital grants after five years of operation, and the government will be increasing its support for capital projects in these schools to 20 per cent of costs from the current 10 per cent. However, there will be no new operating grants for private elementary or high schools.

"The government believes it would be inappropriate to extend operating grants to private schools given their status outside the public education system," Hepworth said.

With regard to home schooling, Hepworth said Saskatchewan Education will hold discussions with interested groups and school boards. Home schooling will continue to be permitted, but Hepworth said he wants to see stronger supervisory procedures worked out to ensure that home schooled children receive a good education.

"In dealing with private schools, the government is faced with competing interests and conflicting perspectives. We have developed a position which I consider to be responsible and reasonable. It strikes a balance between the interests of private schools in our province and the needs of our education system and the public as a whole," Hepworth said.

Legislation and other measures needed to implement the new policies will be developed before the end of the year.

January 23, 1989

Advisory Board Established for Private Schools

Saskatchewan Education Minister Lorne Hepworth today announced that he will set up an advisory board to help develop regulations for private schools.

Private schools have been permitted for many years in Saskatchewan, but regulations defining their legal status have not been fully developed.

The new advisory board will include representatives from all major interest groups and stakeholders, including the universities, public and private schools, parents and employers. As new regulations are drafted within Saskatchewan Education, they will be referred to the board for review and advice.

The minister also announced he is establishing a private schools branch within Saskatchewan Education to co-ordinate drafting of the regulations. The first director of the branch will be Dr. Christopher Gerrard, currently the head of the economics department at the University of Saskatchewan. He has a long-standing interest and involvement in private schools.

To guide Dr. Gerrard and the advisory board, Hepworth also announced he is establishing guidelines for the new regulations. The guidelines will require that private schools must provide a quality of education comparable to that of public schools. They also require that private schools must abide by generally accepted teaching principles. Finally, the guidelines make clear that the cost of operating private schools will continue to rest with the parents who choose that form of education. The use of public funds will not be extended beyond the limited support currently available.

Membership of the advisory board will be announced shortly. Hepworth said he hopes to have new regulations in his hands within the next 12 months.

January 23, 1989

Briefing Paper

On June 27, 1988, Minister of Education Lorne Hepworth announced that "the government will be setting up a system for the regulation and registration of private schools through Saskatchewan Education."

"This system will have three major benefits," he said at that time. "It will give private schools a formal legal status. It will clarify the position of their pupils in terms of compulsory attendance. And it will ensure that private schools maintain a high quality of education."

These measures are required because at present, there is no firm legal framework for the regulation and operation of private schools. Representatives of both public and private schools have agreed that existing regulations based on compulsory attendance provisions are inadequate. Directors of education within the public education system have urged the government to take over the responsibility for overseeing the operation of private schools.

Mr. Hepworth announced today that Saskatchewan Education is taking several steps toward the establishment of a new system of regulation and registration for private schools in Saskatchewan.

First, an advisory board will be set up to assist in developing the new regulatory structure. All of the major stakeholders will be represented on this advisory board, including the universities, SIAST, public and private schools, parents and employers.

The responsibility of the board will be to review and advise on drafts of regulations produced by the Department of Education. By their nature, private schools are different from public schools. Parents send their children to private schools in order to achieve objectives which may not be satisfied within the public school system. At the same time, the public interest requires that all children receive an adequate and balanced education.

By appointing an advisory board with wide representation, the Minister is seeking broad advice on such issues as appropriate standards and a balanced program of study.

Second, the Minister has established a Private Schools Branch in the Department in order to co-ordinate drafting of the regulations.

Dr. Christopher D. Gerrard, presently Head of the Department of Economics at the University of Saskatchewan, has been appointed as the first Director of the Branch. Dr. Gerrard will serve a two-year term beginning July 1, 1989 during which time he will be on leave of absence from the University.

The son of the respected Saskatchewan pediatrician and allergist, Dr. John W. Gerrard, Christopher Gerrard grew up in Saskatoon. He graduated from Nutana Collegiate with the Governor-General's bronze medal and from the University of Saskatchewan with the Governor-General's gold medal. Subsequently, he earned an M. Phil. degree in economics from Oxford

University and a Ph.D. degree in agricultural economics from the University of Minnesota. Since July 1981, he has been at the University of Saskatchewan, first as Assistant Professor and subsequently as Associate Professor of Economics. Since July 1985, he has been Head of the Department of Economics.

In addition to his academic responsibilities, Dr. Gerrard has consulted for the World Bank, the United States Agency for International Development, and the Canadian International Development Agency. He has conducted evaluations of a number of international aid programs. Dr. Gerrard has also contributed to discussions on public education curriculum issues in Saskatchewan, including the new Social Studies curriculum.

From 1984 to 1987, Dr. Gerrard was Secretary-Treasurer of the Saskatchewan Association of Independent Church Schools. Since 1987, he has been the President of the Saskatchewan Association of Independent Church Schools. He will resign this latter position before taking on his new position as Director of Private Schools.

Third, the Minister of Education has established the following policy guidelines within which Dr. Gerrard and the Advisory Board will operate.

- Private schools must provide a quality of education comparable to that of public schools.
- Private schools must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development.
- Private schools must not promote values which conflict with the rights, freedoms and moral principles upon which our society is based.
- The costs of operating private schools will continue to rest with parents who choose this form of education. The use of public funds will not be extended beyond the limited support presently available.

Finally, the Minister has asked for a draft report within the next 12 months. This is expected to form the basis for whatever legislative or regulatory changes are required.

October 24, 1989

Advisory Board for Independent Schools Announced

Education Minister Ray Meiklejohn today announced establishment of a 23-member advisory board on independent schools.

The new board will provide advice to the minister on a wide range of matters relating to independent (private) schools, including development of regulations and policy. Approximately 3,000 Saskatchewan students are currently enrolled in independent school programs for kindergarten to Grade 12.

Meiklejohn said establishment of the board is another step towards development of a workable regulatory framework for independent schools.

"The first step was taken last year when Saskatchewan Education assumed responsibility for regulation of these schools," Meiklejohn said.

"The advisory board will examine such matters as registration of independent schools and operational guidelines, and will provide recommendations to my department on necessary regulations. Our objective is to have a viable regulatory framework in place by the summer of 1990."

Although the board has been given considerable latitude, Meiklejohn said, the government will insist on adherence to three basic guidelines. First, independent schools must provide a quality of instruction comparable to public schools.

Second, they must abide by generally acceptable teaching principles with respect to academic content, teaching methods, teacher training and child development. Third, they must not promote values inconsistent with the rights and freedoms upon which Canada is based.

The board will be chaired by Alec Postnikoff of Saskatoon, a former director of education with the Saskatoon West School Division. Some of the groups represented on the board include the Saskatchewan Teachers' Federation, the Saskatchewan School Trustees Association, independent school operators and the two universities. The business community is also represented.

"The board represents a wide range of expertise and experience. This continues the long-standing tradition of listening to what the major stakeholders in education have to say and working with them on policy development and decision making," Meiklejohn said.

Appendix 3

Amendments to The Education Act, August 1989, With Respect to Independent Schools

1 This Act may be cited as *The Education Amendment Act, 1989.*

2 *The Education Act* is amended in the manner set forth in this Act.

3 Section 2 is amended:

(a) by adding the following clause after clause (s):

"(s.1) 'independent school' means an institution:
  (i) in which instruction is provided to pupils of compulsory school age; and
  (ii) which is controlled and administered by a person that is not a public authority";

(b) by repealing clause (bb);

(c) by repealing clause (ee) and substituting the following clauses:

"(ee) 'pupil' means a person who is enrolled in a school or registered independent school and includes any person who is of compulsory school age;

"(ee.1) 'registered independent school' means an independent school registered pursuant to this Act and the regulations"; and

(d) by repealing clause (ff) and substituting the following:

"(ff) 'school' means a body of pupils that is organized as a unit for educational purposes under the jurisdiction of a board of education or of the department and that comprises one or more instructional groups or classes, together with the principal and teaching staff and other employees assigned to that body of pupils, and includes the land, buildings or other premises and permament improvements used by and in connection with that body of pupils but does not include an independent school".

4 Subsection 10(1) is amended:

(a) by repealing clause (a); and

(b) by adding the following clauses after clause (p):

"(q) make provision for the registration of independent schools;

"(r) make provision for the inspection of registered independent schools".

15 Section 156 is amended by adding the following clause after clause (a):

"(a.1) the pupil is in attendance at a registered independent school".

22 Section 361 is repealed and the following substituted:

"361(1) The operator of:

(a) any registered independent school; or

(b) any educational institution which provides educational services to pupils in courses of instruction prescribed under this Act;

subject to the regulations, when required by the minister, shall furnish information to the department in any form the minister may require with respect to the pupils, teachers, curriculum, facilities and equipment of that school or other educational institution.

"(2) Subject to the regulations, every school or educational institution mentioned in subsection (1) shall be subject to any inspection that the minister considers necessary".

24 Section 372 is amended:

(a) by renumbering it as subsection 372(1); and

(b) by adding the following clauses after clause (1)(c):

"(c.1) respecting the registration of independent schools including prescribing the criteria to be met by independent schools to entitle them to be registered as registered independent schools:

"(c.2) classifying registered independent schools;

"(c.3) governing the administration and operation of registered independent schools or any class or classes of them including requiring registered independent schools or any class or classes of them to submit reports respecting the operation of the schools to the minister and prescribing the times within which the reports shall be submitted and the manner of their submission;

"(c.4) providing for the suspension or deregistration of registered independent schools or any class or classes of them including prescribing the grounds for which a registered independent school or any class or classes of them may be suspended or deregistered and prescribing the procedure for:

(i) suspending or deregistering registered independent schools or any class or classes of them; or

(ii) reinstating the registration of indepemdemt schools, the registration of which has been suspended or deregistered pursuant to subclause (i)".

25(1) Subject to subsections (2) and (3), this Act comes into force on the day of assent.

(2) Clauses 3(a), (c), and (d) and 4(b) and section 15 come into force on the day of assent but are retroactive and are deemed to have been in force on and from January 1, 1989.

Appendix 4

Letter of Invitation

August 10, 1989

To the Organizations Represented on the Advisory Board:

Last January 23, 1989. I announced that I would be setting up a Minister's Advisory Board to help develop regulations for private schools in Saskatchewan. Private schools have been permitted in Saskatchewan for many years, but regulations defining their legal status have not been fully developed.

In the announcement, I indicated that this Advisory Board would include representatives from the public and private schools, post-secondary institutions, apprenticeship and business, and I announced the policy framework within which the Advisory Board would operate. A full outline of the organizations represented on the Board and the policy framework are enclosed with this letter. Mr. Alec Postnikoff of Saskatoon, former long-time Director of Education for Saskatoon (West) School Division, has agreed to serve as Chairperson of the Board.

At the present time, I wish to invite your organization to name individuals to the Advisory Board.

My expectation is that the Advisory Board will meet for the first time in September and that it will meet roughly once a month for ten months, or until all or most of the issues have been covered.

The Department of Education will provide staff support to the Board in the form of the Director of the Independent Schools Branch, and other resources necessary to the functioning of the Board.

To provide a legislative framework for whatever regulations, policies and procedures are recommended by the Board, amendments to *The Education Act* and *The Urban Municipality Act* were recently introduced in the Legislature that empower the Minister of Education to register, regulate and inspect independent schools.

I look forward to receiving the name of your appointees to this important Advisory Board.

Yours sincerely,

Lorne H. Hepworth
Minister

Attachment

A. Membership

Representatives from the public education system

1&2. Saskatchewan School Trustees Association (two representatives)

3&4. Saskatchewan Teachers' Federation (two representatives)

5. League of Educational Administrators, Directors, and Superintendents

6. University of Saskatchewan, College of Education

7. University of Regina, Faculty of Education

Representatives from the independent schools

8&9. Saskatchewan Association of Private High Schools (two representatives)

10&11. Saskatchewan Association of Independent Church Schools (two representatives)

12. Seventh-day Adventist Schools

13. Church of God in Christ (Mennonite) Schools

14. Society Schools

Representatives from the post-secondary/employment sector

15. University of Saskatchewan (Registrar)

16. University of Regina (Registrar)

17. Saskatchewan Institute of Applied Science and Technology (Registrar)

18. Saskatchewan Employers

19. Apprenticeship and Training

Others

20. Chairperson

21. Saskatchewan Education (Curriculum and Evaluation)

22. Saskatchewan Education (Independent Schools)

23. Legal Advisor

B. Policy Framework

The need to develop more defined policies with respect to independent schools in Saskatchewan has arisen from three considerations. First, from either a historical, legal, or practical perspective, independent schools have the right to exist in Saskatchewan, and parents have the right to enroll their children in such schools. Second, while in accordance with these perspectives, independent schools have existed in Saskatchewan for many years, regulations, policies and procedures that define their legal status have not been fully developed. Third, the Minister of Education has the responsibility of ensuring that all children, whether enrolled in public or independent schools, have access to a common, generally accepted standard of education.

An Advisory Board to the Minister on Independent Schools will be established to recommend regulations, policies, and procedures governing the operation of independent schools in Saskatchewan. The administrative framework and guiding principles within which the Board will make its recommendations are as follows:

Administrative Framework

1. Private schools will now be called "independent" schools.

2. The newly established Independent Schools Branch of Saskatchewan Education will administer a system for the registration and inspection of independent schools.

3. Children attending registered independent schools will meet the compulsory attendance requirements of *The Education Act*.

4. Registered independent schools will, subject to regulations, be exempt from paying local property taxes on their land and buildings used for school purposes.

5. Accredited independent high schools will continue to receive operating grants at existing levels in accordance with existing regulations and will now be eligible for capital grants of 20 percent of capital costs, compared to 10 percent prior to 1988. No operating or capital grants will be provided to independent elementary schools.

Guiding Principles

Independent schools:

1. Must provide a quality of education comparable to that of public schools. However, it is recognized that, by their very nature, independent schools are different from public schools. Parents send their children to independent schools in order to achieve objectives which may not or can not be satisfied within the public education system.

2. Must abide by generally accepted teaching principles with respect to academic content, teaching pedagogy, teacher training, and child development.

3. Must not promote values which conflict with the rights, freedoms and moral principles upon which our society is based.

The precise agenda of the Board will be worked out by the Chairman in consultation with the members of the Board. The Board will have the power to establish technical subcommittees to conduct detailed work on particular issues and to present viable alternatives of dealing with these issues to the parent Board. All subcommittees must be balanced by a matrix of representatives similar to the Board. Members of subcommittees need not necessarily be members of the parent Board. The Director of the Independent Schools Branch will be ex-officio member of all technical subcommittees.

Appendix 5

Minister's Letter Clarifying the Mandate of the Advisory Board

November 27, 1989

Mr. Alec Postnikoff, Chairman
Minister's Advisory Board on Independent Schools
1726 Prince of Wales
Saskatoon, Saskatchewan
S7K 3E5

Dear Mr. Postnikoff:

Thank you for your recent letter in which you raise a number of questions with respect to the mandate of the Advisory Board on Independent Schools.

I will respond to each of your points, but at the outset I should indicate that I am reluctant to be too definitive about what the Board can discuss or the kinds of recommendation it can make. I think it is important that the Board have an opportunity to discuss the issues as fully as possible, and I would not want to restrict its deliberations unnecessarily. Within this context, I can offer the following comments.

The three points which you state about the role of Saskatchewan Education are correct. With respect to funding, I can outline our position as follows. No new grants will be paid directly to independent schools for any operating purposes. Boards of education are free to enter into voluntary arrangements with independent schools to provide services such as transportation. However, any incremental costs associated with such services will not be recognized by the Department of Education for grant calculation purposes.

With respect to the legislation, I believe the Board should accept the government's stated position as given. We are satisfied that we are proceeding in a legitimate way and will continue on this basis, recognizing that the policies of any government are potentially subject to challenge on some type of constitutional grounds. In terms of its specific recommendations, the Board should, of course, attempt to ensure that it remains within the relevant existing laws. I do not believe the Board should be concerned if any of its recommendations appear to require an amendment to provincial legislation. The Department of Justice will ultimately be responsible for determining which items must be in statute, which can go in regulation, and which can be handled simply as policy statements.

Finally, you ask about the Board's ability to make recommendations pertaining to the internal operation of independent schools and public education systems and organizations. I expect that such recommendations will arise naturally out of the Board's discussions. I see no problem with such recommendations provided they are designed to facilitate the effective operation of independent schools and to promote a harmonious relationship with other stakeholder groups. It would clearly be unhelpful if the Board were to make recommendations which would serve to isolate independent schools or which would have a significant negative impact on their ability to operate.

I hope that you will find these comments helpful. I look forward to the opportunity to meet with you before too much longer, possibly on a day when I am in my Saskatoon office. Thank you again for your letter.

Sincerely,

Ray Meiklejohn
Minister

Appendix 6

Objectives and Process

October 10, 1989

A. Objectives

The objectives of the Board are to make recommendations to the Minister of Education concerning regulations, policies, and procedures governing the operation of independent schools in Saskatchewan:

(1) That respect the liberty of parents to enrol their children in independent schools in order to give their children an education in conformity with their own philosophical convictions;

(2) That protect the public interest in education,
   (a) that all Saskatchewan children have access to (i.e. are not deprived of) a common, generally accepted standard of education; and
   (b) that independent schools do not promote values which conflict with the rights, freedoms and moral principles upon which our society is based;

(3) That permit students in independent schools to be accepted in the wider society at large for the education that they have achieved at an independent school, whether these students choose
   (a) to transfer to another school;
   (b) to seek employment in the public or private sectors; or
   (c) to pursue post-secondary studies.

The Minister has already pre-determined the following administrative framework:

(1) The newly established Independent Schools Branch of Saskatchewan Education will administer a system for the registration and inspection of independent schools. In order to operate legitimately in Saskatchewan, an independent school will have to be registered (as opposed to licensed) directly with Saskatchewan Education. Children attending registered independent schools will meet the compulsory attendance requirements of *The Education Act*, and the facilities of registered independent schools will be exempt from municipal property taxation.

(2) The costs of operating independent schools will continue to rest with parents who choose this form of education. There will be no new operating grants for independent schools beyond that currently provided for accredited high schools.

B. Process

1. Agenda

The Chairman and the Director of Independent Schools will consult with all organizations represented on the Board prior to the first meeting and propose a priorized agenda that will be discussed and agreed upon at the first meeting.

2. Decision-making

As far as possible, the Board will work on a consensus basis. Where consensus is not achievable, voting will be by majority vote, all 23 members having a single vote. However, a large majority of Board members present at each meeting must agree on each recommendation to the Minister. Any dissent should receive extensive attention in order to minimize the extent of dissent at the end of the process. Where the Board cannot agree on a recommendation with respect to a particular issue, then several options for dealing with this issue should be presented to the Minister, along with the views and reasoning behind the several options.

3. Meetings

The Advisory Board will present its recommendations to the Minister at the earliest possible time. In general, it is expected that the Board will meet roughly once a month throughout the fall, winter, and spring, 1989-90, or until all or most issues have been covered. However, the Board may meet as frequently as is necessary in order to carry out its mandate.

Full attendance by all members is not necessary for a meeting to proceed, but there must be a quorum comprising at least *four* of the seven representatives from the public school system, *four* of the seven representatives from the independent schools, *two* of the five representatives from the post-secondary/employment sector, and *two* of the four remaining representatives.

At its first meeting, the Board will designate a Vice-Chairperson to chair meetings of the Board in the absence of the Chairperson.

4. Executive Committee

The Board will establish an Executive Committee to meet on its behalf from time to time to oversee aspects of the ongoing work, but *not* to make substantive decisions, which remain the sole prerogative of the entire Board. This Committee will consist of *two* representatives from the public school system, *two* representatives from the independent schools, *one* from the post-secondary/employment sector, the Chairperson, and the Director of Independent Schools, the latter two who will serve as chairperson and secretariat of the Committee, respectively. All members of the Executive Committee must be members of the overall Board.

5. Technical Subcommittees

The Board may establish such technical subcommittees as it determines are required to carry out its mandate. The purpose of the subcommittees will not be to make substantive decisions but rather to conduct detailed work on particular issues and to present viable alternatives for dealing with particular issues to the overall Board.

The Board will determine the particular mandate and membership of each subcommittee that it decides to establish. All subcommittees must be balanced by a matrix of voting representatives similar to the Board. The Board would encourage membership of subcommittees from the overall board but it (the Board) or the Executive Committee may appoint members of subcommittees who are not necessarily members of the parent Board. The Board may also appoint technical experts as non-voting members of particular subcommittees. The Chairperson of the Board and the Director of Independent Schools will be ex-officio members of all technical subcommittees.

6. Secretariat

The Independent Schools Branch of Saskatchewan Education will provide secretariat services to the Board, to the Executive Committee, and to all technical subcommittees. The Branch secretary will record the minutes of all meetings. The Director will oversee the production and distribution of these minutes, which will not be of the verbatim type, nor will they attribute views to individuals (unless an individual specifically requests that his views be attributed to his organization or to himself as a matter of record). Rather they will present brief summaries of the main subjects discussed, the key arguments advanced, and the conclusions or decisions reached. The minutes of each meeting will be approved at the beginnning of the subsequent meeting.

7. Research and Submissions

The Board or its subcommittees may commission, within reasonable limits, particular research or studies in order to assist the Board or its subcommittees with their deliberations.

Members of the Board or its subcommittees may also present their own written submissions in order to substantiate statements that they make.

At its discretion, the Board (or the Executive Committee on behalf of the Board) may choose to receive verbal or written presentations from groups not represented on the Board.

8. Confidentiality

The discussions of the Board will be private to the membership of the Board, except for such releases of information to the media as the Board itself agrees upon. In such cases, the Chairperson (on in his absence, the Vice-Chairperson) will be the spokesperson for the Board.

9. Compensation

Board and subcommittee members who are not otherwise compensated for their participation shall be reimbursed for their expenses and receive a per diem of _______ for their time in attending meetings.

Appendix 7

Legal Status of Independent Schools

From: Larry Anderson
Civil Law Division
Department of Justice

January 29, 1990

787-5464

To: Michael Littlewood, Director
Board and Teacher Services
Saskatchewan Education

Re: **The Status of Independent Schools as Legal "Persons": An Interpretation**

Section 2(s.1) defines an independent school as an institution:

"(i) in which instruction is provided to pupils of compulsory school age; and
(ii) which is controlled and administered by a person that is not a public authority."

The following is an interpretation of the general powers of independent schools.

Public school divisions and boards are public authorities, which is to say, that they are creations of *The Education Act*. A group of people cannot get together and form a public school division except as provided for in this Act. Furthermore, as statutory creations, public school divisions are only permitted to do those things that the Act specifically authorizes them to do.

Independent schools, on the other hand, in other provinces (except Quebec) as well as Saskatchewan, are established as some form of corporation, usually a non-profit corporation. As such, they are legal "persons" and, subject to any limitations in the Act pursuant to which they are incorporated or their incorporating documents, possess the same powers as individuals possess, such as the right to enter into contracts or to borrow money.

Generally speaking, the powers of an independent school are limited or restricted in three ways:

(1) in the first instance, by laws that restrict the rights of individuals or corporations;

(2) in the second instance, by the Act under which it is incorporated, its incorporating documents, its by-laws or any agreement binding its members, which might impose any type of limitation or control on its activities or powers; and

(3) in the third instance, by explicit provisions in legislation relating to activities it is undertaking. Typically, such provisions arise at the point where the activities of persons come into contact with matters of public concern. In the case of independent schools, these would include the applicable provisions of *The Education Act*, examples of which would be recognition of the school for purposes of compulsory attendance, exemption from municipal property taxes, recognition of the school's educational program for purposes of Division IV credits, and public funding.

Appendix 8

Constitutional Issues Affecting Independent Schools

Howard McConnell
Professor of Law
University of Saskatchewan

February 10, 1990

The Canadian "Pluralistic" Standard in Education

The common, generally accepted, standard of education in Canada is a pluralistic standard. One of the cornerstones of the Confederation bargain in 1867 was s. 93 of *The Constitution Act, 1867*, which, while conferring legislative jurisdiction over education on the provinces, preserved pre-existing denominational school rights in Quebec and Ontario.

Under s. 93, the indicated provincial legislatures are empowered to make laws in relation to education subject to four provisos safeguarding the rights and privileges of educational minorities. The respective provisos, in brief, stipulate: (1) that no provincial law shall prejudicially affect denominational school rights or privileges existing by law in a province at the union; (2) that dissentient schools in Quebec shall possess the "powers, privileges and duties" enjoyed by separate schools in Ontario at the union; (3) that where dissentient or separate schools exist by law at the union, or are thereafter established, an appeal will lie to the federal cabinet from any provincial "act or decision" in relation to education which adversely affects such schools; and (4) that where a province derogates from the rights and privileges acknowledged in the foregoing sections, and the province, after an order by the federal cabinet, fails to correct the situation so arising, the federal parliament may itself enact remedial laws to protect the minority's educational rights, thereby altering the repugnant provincial laws so that they conform to the pre-existing situation.

Subsection 93(4), as paraphrased above, reveals the extraordinary sensitivity with which the Fathers of Confederation regarded the need not only to stipulate, but to guarantee, if necessary by federal legislative intervention, the preservation and continuation of minority religious educational rights. There are very few constitutional provisions in the Canadian or other federal constitutions empowering the central legislative organ to intervene unilaterally to remedy illiberal provincial legislation for any purposes, including derogation from existing provincial denominational school rights.

As new provinces entered Confederation, s. 93 was altered somewhat to adapt to local circumstances. The phrase "have by law" in s. 93(1) was changed in s. 22(1) of *The Manitoba Act* to read "have by law or practice", apparently in recognition of the fact that no legally established separate school system existed in Manitoba in 1870 at the time of union;[1] the section was altered for Alberta and Saskatchewan by s. 17 of *The Alberta* and *Saskatchewan Acts, 1905*, respectively. In Newfoundland, by Term 17 of *The Terms of Union*, s. 93 was rendered inapplicable, but provincial jurisdiction over education was made subject to "any right or privilege with respect to denominational schools" existing at the date of the Union and certain guarantees were given for continued public financing of such schools. In addition, Nova Scotia and Prince Edward Island have made provisions for denominational education, making a total of seven Canadian provinces which have constitutional prescriptions for publicly funded separate schools.

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[1] 33 Vict., c. 3 [Canada], confirmed by s. 5 of *The Constitution Act, 1871*, 34-35 Vict., c. 28.

In 1987, the Supreme Court of Canada gave powerful reaffirmation to section 93, in a case challenging, on constitutional grounds, the right of the Province of Ontario to provide full funding to the end of high school for the Catholic separate school system in the province.[2] Before 1987, the province had provided funding only for the first two years of Catholic secondary schooling.

An issue raised by some of the intervening private schools in this case was whether the extension of funding to the final two years of Catholic high schools in Ontario would derogate from the "equality rights" of private schools under s. 15 of *The Canadian Charter of Rights and Freedoms*, which did not receive similar public funding. In deciding the case, the Supreme Court held that section 93, under which the increased Catholic funding could be validly maintained, was an implied exception to the Charter provisions on "equality rights", since it formed part of the "Confederation bargain" without which the provinces of Ontario and Quebec would not have entered the federation in 1867.[3] Accordingly, to give s. 15 priority over s. 93 would countervail unacceptably a constitutional provision from which, on historical grounds, there should be no derogation.

The implications of the Supreme Court decision contain powerful implications for future *Charter* interpretation. Most rights' charters define rights and freedoms in a *universal* sense. Where, however, as in the above case, a court decides that earlier or later constitutional provisions are so central to some overriding constitutional interest that in any putative conflict they prevail over *Charter* rights, the latter, to that extent, lose their *universal* character. It is not that (as in more typical *Charter* cases) one right is subordinated to another right, but that, in stipulated circumstances, the right does not apply at all. It gives way to a more imperative constitutional norm from which, at least in its central aspects, there can be no detraction whatsoever.

In Saskatchewan's 1901 *School Ordinance*,[4] the relevant educational law which still applies in the province in respect of religious instruction, provision for religious instruction is made in ss. 137-139. Section 137(2) enables local school boards to direct the opening prayer, while s. 138 stipulates that attendance during religious exercises is not compulsory for students whose parents or guardians object to religious instruction. According to s. 139, moreover, no student should be deprived of ordinary education given in such school. Religious education is encouraged, but there is no religious test prerequisite for ordinary schooling.

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[2] *Ref. re An Act to Amend the Education Act* (1987) 1 S.C.R. 1148, 40 D.L.R. (4th) 18.

[3] *Ibid*, 40 D.L.R. (4th) at p. 60.

[4] C.O., c. 75, s. 1.

In a recent Supreme Court case, *A.-G. Que.* v. *Greater Hull School Bd. et al.*,[5] a Quebec measure providing for a new system of school financi[illegible] which would have undermined the rights of provincial denominational schools, under s. 9[illegible] to receive grants on a "proportionate" basis, was found unconstitutional. To sustain the Quebec legislation would have nullified vested denominational financial rights existing in 1867. This was clearly impermissible.

While it is true that the 1987 Ontario Catholic funding case mentioned above did not uphold the challenge by private schools, under s. 15, to either receive equivalent funding or have the legislation rescinded, that particular case has to be seen in its peculiar context. The Supreme Court did not hold that private schools would not, in different circumstances, be entitled to funding, because it never reached that issue. It held, merely, that under s. 93 certain defined denominational rights took such priority over sections 2(a) and section 15 of the Charter that those provisions would not even be considered, leaving the Catholic school system, relatively speaking, in an unassailable constitutional position. A relevant question to ask, therefore, is whether, under common law and the law of *The Charter*, the existing pluralistic standard may or may not be reinforced.

The Position at Common Law and Under the Charter

Even before *The Charter* was adopted in 1982, at common law, freedom of conscience and religion was recognized as a matter of natural rather than positive law. In the 1957 case of *Chabot* v. *Lamorendiere*[6], the Quebec Court of Appeal held itself ready to invalidate any Act or regulation which would impose Catholic religious instruction on a Jehovah's Witnesses' child. In the words of Casey, J.:

> If these rights find their source in positive law, they can be taken away. But if, as they do, they find their existence in the very nature of man, then they cannot be taken away, and they must prevail should they conflict with the provisions of positive law.[7]

In a different context, Abbot J. of the Supreme Court of Canada suggested in a *dictum* in *Switzman* v. *Elbling and A.-G. Que.*[8] that rights to debate and discussion were so fundamental in Canadian society that neither Parliament nor the provinces could abrogate the right by restrictive legislation. This dictum also represents, essentially, a natural law standard.

Pluralism in Canadian society generally, and in the educational context, has been strongly reinforced by a number of provisions in *The Charter of Rights*, and particularly by section 2(a):

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[5] [1984] 2 S.C.R. 576.

[6] 12 D.L.R. (2d) 796 (Que. C.A.).

[7] *Ibid*, at p. 807.

[8] (1957) S.C.R. 285.

> **2. Everyone has the following fundamental freedoms:**
> **(a) Freedom of conscience and religion.**

The Supreme Court of Canada, indeed, has decided that freedom of conscience and religion is *the* fundamental freedom that "lies at the heart of our democratic tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability and efficacy of our system of self-government." Such freedom is central "both to basic beliefs about human worth and dignity and to a free and democratic political system." It is, moreover, "the *sine qua non* of the political tradition underlying the Charter".[9]

Western political philosophers place freedom of conscience at or near the top of the distinctive features of Western Civilization and trace the concept to both Greek and Judeo-Christian roots. The Greek element consisted in the development of the mind in the quest for truth, and the Judeo-Christian element emphasized the importance of moral obligation to God as found in the conscience. It is often said that these twin pillars of the Hebraic-Christian and Hellenistic heritage are among the main supports of Western culture.

On the authority of the Supreme Court of Canada in *Big M Drug Mart*, the relevant period in British history in which freedom of conscience and religion was finally defined and instituted in Britain (and therefore in British-descended countries like Canada) was the post-Reformation period up to *The British Bill of Rights* in 1689:

> The origins of the demand for such freedom are to be found in the religious struggles in post-Reformation Europe. The spread of new beliefs, the changing religious allegiance of kings and princes, the shifting military fortunes of their armies and the consequent repeated redrawing of national and imperial frontiers led to situations in which large numbers of people -- sometimes even the majority in a given country -- found themselves living under rulers who professed faiths different from, and often hostile to, their own and subject to laws aimed at enforcing conformity to religious beliefs and practices they did not share.
>
> English examples of such laws, passed during the Tudor and Stuart periods have been alluded to. . . . Beginning, however, with the Independent faction within the Parliamentary party during the Commonwealth or Interregnum, even among those who shared the basic beliefs of the ascendent religion, came to voice opposition to the use of the State's coercive power to secure obedience to religious precepts and to extirpate non-conforming beliefs. The basis of this opposition was no longer simply a conviction that the State was enforcing the wrong set of beliefs and practices but rather the perception that belief itself was not amenable to compulsion. Attempts to compel belief or practice denied the reality of individual conscience and dishonoured the God that had planted it in his creatures.[10]

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[9] *Regina* v. *Big M. Drug Mart* (1985) S.C.R. 93 at 105.

[10] *Ibid*, at p. 104.

In his *Letter Concerning Toleration*, also published in 1689, John Locke provided the intellectual support for freedom of conscience and religion as it was defined and instituted in Britain at the time. Specifically, he wrote this letter in support of the nonconformists' resistance to Anglican uniformity in Restoration England.

While the uniformists argued that nonconformists such as John Bunyan could believe what they wanted to believe so long as they did not practise their beliefs openly, Locke argued that religious belief could not be so separated from religious practice. To enforce conformity of practice was to turn people into hypocrites and into enemies, and to cause unnecessary human suffering. People did not readily change their beliefs, even on the point of death, because hyprocrisy was a sin that was destructive of one's supreme interest, namely, eternal salvation.

Locke argued for what is now referred to as the separation of church and state. According to him, the state and the church had different spheres of concern, that of the state, the purely secular, and that of the church, the sacred. The state was properly concerned with the promotion of material goods, the church with the promotion of spiritual goods. In particular, the promotion of "true religion" was not a concern of the state, since, in any event, there was no known criteria for determining which was the true religion.

Within their respective spheres of concern, while the power of the state was ultimately coercive, that of the church was purely persuasive. By church, Locke did not mean a national church, but rather a local assembly -- a body of believers united by a common faith and practice. Explicitly, Locke defined a church as:

> a voluntary Society of Men, joining themselves together of their own accord, in order to the publick worshipping of God, in such a manner as they judge acceptable to him and effectual to the Salvation of their Souls.[11]

To Locke, an established national church was among the greatest threats to peace.

Admittedly, this distinction between the secular and the sacred, was not always clear-cut. While the coercive power of the state should not generally enter to the arena of conscience, there always existed borderline cases. Locke himself distinguished "speculative opinions", such as the Roman Catholic belief in transubstantiation, which did no injury to one's neighbour, from "practical opinions", which might be seditious, because the individual might be a servant of a foreign power. Where a church's activities began to impact upon the realm of the material, then the state might have a legitimate claim against the activities of a particular church. But in all such instances, he argued, the burden of proof rested properly with the state, and the only good grounds were when public security or the rights of other individuals were being threatened.[12]

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[11] John Locke, *A Letter Conerning Toleration*, Indianapolis: Hackett Publishing Company, 1983[1689], p. 28.

[12] For Locke, the rights of children, before they reached the age of maturity, did not come into play. That is, Locke, like all other philosophers, did not accept the concept of the autonomous child. Beyond the age of maturity, however, an adult was free to choose his own faith

In cases where the coercive power of the state did, inadvertently or otherwise, enter into the arena of conscience, individuals were to resist passively, not violently. They were not obligated to obey a law prescribing what they sincerely believed to be a sin, but they were obliged to suffer the punishment, until by the force of their example, they persuaded the state to change the law. Thus religious toleration did not lead to civil war, as the uniformists argued, but rather to peace. It was the state's enforcement of uniform religious practice that led to civil war, such as the British civil war of 1642 to 1652.

Having stood the stood the test of time, Locke's *Letter* is regarded as the intellectual foundation for the international rights movement from then until the present day. While Locke's ideas were first expounded with respect to freedom of conscience and religion, they have since been extended to moral and political beliefs. As such, his ideas are now an integral part of the normative culture of Western democracies, and in particular, form the foundation for *The American Bill of Rights*, *The United Nations Declaration on Human Rights*, and *The Canadian Charter of Rights and Freedoms*.

Interpretation of the Charter

As contrasted with pre-existing "statutory" human rights provisions, the Charter's entrenched human rights norms,[13] which apply to both provincial and federal legislation, have much greater vitality. For the most part, they comprise a universal, "higher law" standard, analogous to natural law, which purports to apply to all lesser legislation. The antecedent doctrine of the supremacy of Parliament reflects more the Hobbesian tenet that in the making of legislation the Canadian sovereign (at least within its defined "division of powers") is essentially unconfined. This was the constitutional position before 1982. With the adoption of *The Charter* however, the Canadian constitution resembles more the philosophical position of John Locke, just discussed, which emphasizes that there can be no derogation by lesser laws from certain higher law values. In the Lockean tradition, society is seen as larger than the state, and individual rights are never completely engulfed by state powers.

What occurs in the Charter is a whole system of rights or freedoms, all of which must be read together. In addition to "freedom of conscience and religion" in s. 2(a), there is the right to "life, liberty and security of the person" in s. 7, various equality rights in s. 15, minority language educational rights in s. 23, and the important proviso in s. 26 that enumerated rights do not detract from other rights or freedoms (arguably, parental rights to raise and educate children in accordance with their religious beliefs) which are not expressly enumerated. The multiculturalism provision, s. 27, has pluralistic cultural and religious implications. Section 29 also enshrines historic denominational school rights such as those in s. 93 of *The Constitution Act, 1867*, set out above.

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and practice, irrespective of what his parents believed and practised.

[13] Cf. Mr. Diefenbaker's, *Canadian Bill of Rights*, 8-9 Eliz II, c. 44 (Canada).

Whenever a conflict arises between the above sections, or between such sections and other legal provisions, one must resort to interpretation as in the Catholic secondary school ruling to determine which of the opposed provisions prevails. In such a case, the fact that the essence of the Charter resides in protecting the rights of minorities places a premium on protecting more vulnerable minorities.

In *Jones* v. *The Queen*[14], a Baptist pastor in Calgary was charged with assisting the truancy of his children under s. 180(1) of the School Act, whereupon he argued that he had been deprived of "liberty" contrary to fundamental justice by s. 143(1)(a) which limited evidence of "efficient instruction" of his children to a certificate for which, because of his religious principles, he did not consider it possible for him to apply.

Although the court majority held that the provincial legislature had provided means for the accused to obtain a certificate of exemption, and, therefore, that his argument that he was unjustifiably deprived of liberty could not be maintained, his subsequent imprisonment caused provincial educational authorities to reconsider their position. In a strong dissent, Madame Justice Bertha Wilson argued that the Alberta authorities should have provided a more flexible means for Jones to maintain his liberty interest.[15] As a result, Alberta established in 1988 a less intrusive means for the registration of schools such as that conducted by Pastor Jones to obviate similar problems in future.

Provincial Bills of Rights:

The *Saskatchewan Human Rights Code*,[16] in section 13, assigns an important place to the education of religious minorities:

> 13(1) Every person and every class of persons shall enjoy the right of education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of his or their race, creed, religion, colour, sex, marital status, physical disability, nationality, ancestry or place of origin.
>
> (2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or physical disability, where it enrols persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled.

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[14] (1987) 31 D.L.R. (4th) 569.

[15] *Ibid*, at p. 585.

[16] S.S. 1979, c. S-24.1.

It is noteworthy that s. 13(2) expressly permits schools to follow a "restrictive policy" respecting enrolment when they are "conducted by a religious order or society". This pioneer provincial enumeration of human rights in Canada accordingly contained a seminal provision enshrining a right to education for those who dissented from mainstream educational or religious systems on grounds of belief.

In *Regina* v. *Wiebe*[17], an Alberta court found Mennonite parents not guilty of violating a seemingly imperative provision requiring parents to send their children either to state schools or to approved private schools, when it was clear that refusal to do so was based on conscientious religious beliefs. The court found that the parents' beliefs were irrevocably linked to education, while the first section of *The Alberta Bill of Rights* set out a basic right to freedom of religion[18]. In rendering his decision, Judge Oliver declared:

> The accused in this case has committed no real crime. He has not refused to send his child to school, only to a particular school where, among other factors that are abhorrent to his religious beliefs, he says the teachers are indoctrinated in a liberal value system unacceptable to him or his Church.[19]
>
> On all of the evidence in this case, I hold the School Act, insofar as it relates to school attendance and creates exceptions that in some cases involve a consideration of the Department of Education Act, is rendered inoperative by reason of the Alberta Bill of Rights because it denies to the accused, Elmer Wiebe, freedom of religion.[20]

With respect to the particular regulatory requirement that approved private schools should employ certified teachers, the court held that this was an unnecessary intrusion of the state into the freedom of religion of the defendant to require teachers in his religiously-based school to be state-certified. The *Wiebe* case, while not technically binding, would be highly persuasive here in Saskatchewan, since the "freedom of religion" is the same and the statutory basis of the educational systems is similar in the two provinces. Freedom of religion is essentially inseverable.

International Declarations

International declarations to which Canada has acceded emphasize parental rights over the education of their children. One of the first and most authoritative of such declarations, *The Universal Declaration of Human Rights*, adopted and proclaimed by the General Assembly of the

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[17] [1978] 3. W.W.R. 36 (Alberta Prov. Ct.).

[18] *Ibid*, p. 47.

[19] *Ibid*, p. 61.

[20] *Ibid*, p. 62.

United Nations on 10 December, 1948, enunciates in Article 26(3): "Parents have a prior right to choose the kind of education that shall be given to their children".

The International Covenant on Civil and Political Rights, to which Canada became a party in 1976[21] sets out in Article 13(3):

> The States parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Professor Peter Hogg observes of the above Covenant that its terms "are relevant to the interpretation of the Charter, by virtue of the rule that a statute (and presumably a constitution) should be interpreted as far as possible into conformity with international law."[22] Insofar as s. 2(a) of *The Charter*, accordingly, or s. 15 of *The Charter* confers rights on religious minorities wishing to educate their children in other than public schools, both Article 26(3) of *The Universal Declaration* and Article 13(3) of the above *Covenant* would lend powerful support to the legal right of parents to educate their children according to the dictates of their conscience.

Article 14 of *The United Nations Draft Convention on the Rights of the Child* provides as follows:[23]

> 1. States Parties shall respect the right of the child to freedom of thought, conscience, and religion.
>
> 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

This constitutes another important affirmation of the rights of parents to provide their children with a suitable religious education.

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[21] P.W. Hogg, *Constitutional Law of Canada*, 2nd edition (Toronto: 1985), at p. 662.

[22] *Ibid*, p. 662.

[23] E/CN.4/1989/29, 16 February 1989.

American Jurisprudence

The leading case in the United States on the freedom of parents to select a nonpublic religious school for their children is *Pierce* v. *Society of Sisters*[24]. A standard text[25] describes the holding in this case as follows:

> The Oregon Compulsory Education Act, which required parents of children between the ages of 8 and 16 years to send them to public elementary schools only, was declared an unreasonable interference with the liberty of the parents to direct the upbringing of their children in violation of the U.S. Constitution's Fourteenth Amendment. To choose between a public education or an education at a nonpublic school (religious or otherwise) for their children was described as a "fundamental liberty" of parents. Said the court, there is no "general power of the State to standardize its children by forcing them to accept instruction from public teachers only". This 1924 landmark case established the law on this subject.

It is instructive that the Charter contains language, in section 7, for example, very similar to the American Fourteenth Amendment, and an argument similar to that outlined above could be made persuasively in Canada. While s. 2(a), unlike the American First Amendment, does not contain a non-establishment clause, the above U.S. ruling does not turn on the wording of the First Amendment.

Recent Legal Developments

In the light of the above authorities which indicate an important affirmation of the right of parents who, for reasons of deeply-held and sincere religious convictions, wish to send their children to alternative private schools, certain legal developments can only be disquieting.

In *Zylberberg* v. *Sudbury Board of Education*[26], for example, the Ontario Court of Appeal held that local regulations requiring public schools to open and close each day with religious exercises, including the Lord's Prayer (subject to a right of non-participation for the children of non-concurring parents) were of no force and effect. The case, in due course, will be heard by the Supreme Court of Canada, but will quite probably be affirmed.[27] Another Ontario Court of

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[24] 268 U.S. 510 (1924).

[25] John C. Hogan, *The Schools, The Courts and The Public Interest*, 2nd. edition (Lexington, Mass.: Lexington Books, 1985), at p. 135.

[26] (1989) 52 D.L.R. (4th) 577 (Ont. C. A.).

[27] Editor's note: As of October 1990, neither the *Zylberberg* nor the *Elgin County* decisions have been appealed to the Supreme Court of Canada. Hence, even though the two rulings are

Appeal decision has just prohibited religious instruction in public schools in Elgin County, where more than 90 per cent of the affected children belong to Christian denominations.[28]

In commenting on the position subsequent to this latest ruling, Robert Sheppard discusses some of the alternatives that may be open for those who want to retain some religious instruction in the public schools:

> The options are fairly limited. Abolish religious instruction in public schools altogether (as was recommended by a previous inquiry in 1969); leave out moral values for the study of comparative religions (the sometimes day academic approach); or blend everything into a multi-faith program (the often bland, Hallmark card style that has been pioneered by Metro Toronto school boards).
>
> Abolishing these courses would suit some, but it brings with it its own set of new problems. With the state-funded Roman Catholic system teaching religion as part of its core curriculum (a legacy of Confederation), there is bound to be a feeling of unfairness by other religious groups who would no doubt rekindle efforts to have their own private schools publicly financed.

Robert Sheppard, who wrote the above piece, sees no easy answer to the questions he raises within the confines of the Ontario public school system.[29]

In view of trends like the above, the parental right to freedom of conscience and religion in s. 2(a) assumes added importance. The same *Charter* section which, arguably, guarantees parental rights to minority religious instruction also inspires a secularistic trend in the public school system that is bound to be felt, in time, across the whole country. Some parents *do* conscientiously object to the teaching of evolution in the schools, at least without equal time for creationism, to the assignment of specific works of literature in the public schools, which they find unsuitable, and to other materials. Where opposition to such materials is founded on deeply-held religious convictions, failure to provide at least recognition for independent schools will lend to an undesirable repetition of imprisonment on grounds of conscience as in the Pastor Jones case.

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authoritative decisions of the highest court in Ontario, they are simply persuasive, not binding, in other provinces, even in Saskatchewan whose early educational legislation was derived directly from Ontario. Because section 17 of *The Saskatchewan Act, 1905*, supplements section 93 of *The Constitution Act, 1867*, it is not altogether clear what the courts would rule in the case of religious exercises and religious education in Saskatchewan's public schools.

[28] Robert Sheppard, "Ruling on Religion in Public Schools Begs Some Tough Questions", *Globe and Mail* (Toronto: Feb. 1, 1990), p. A7.

[29] *Ibid.*

Conclusion

On the basis of the philosophical principles and international declarations, the common law and the higher law of *The Charter*, all mentioned above, it is manifest that freedom of conscience and religion in education is an important freedom, assigned a particularly high status in the Canadian Constitution. It is noteworthy that this freedom is enshrined in section 2 of the Charter, subtitled "Fundamental Freedoms", which section enumerates the first such freedoms found in the whole document. Arguably the rights of freedom of conscience, religion, assembly, and expression set out therein are logically prior to all the other rights and freedoms which come later. Without observance of these initial freedoms, all the others would disintegrate. Such freedoms are part of the societal consensus reflecting a basic toleration of minority opinions and a right to dissent.

Based on the foregoing summary, it seems indisputable to me that independent schools have a right to exist in Canada. Any attempt to suppress them, or regulate them in the core of their religious beliefs, would be inconsistent with freedom of conscience and religion and hence unconstitutional. While the state is legitimately concerned with minimum educational standards, uniform requirements in respect of, say, curriculum or the qualifications of teachers, by requiring teachers to be state-certified according to provincial regulatory norms, would likely be held unnecessarily intrusive into the affairs of religiously-based schools.

In John Locke's terms, if the state alleges that, say, a religiously-based school is encroaching negatively on the "material" sphere of the state, in this instance with respect to the secular component of children's education, then the burden of proof must rest with the state. Indeed, in an Ontario case, *Lambton County Board of Education* v. *Beauchamp*, the court so held:

> Those seeking to invoke the compulsive powers of the state in the face of the alleged failure of the parent or guardian to provide an adequate alternative, and thereby to impose the sanctions of a quasi-criminal legislation, have a substantial burden of proof.
>
> In this case the evidence tendered on behalf of the Lambton County Board of Education falls short of establishing beyond a reasonable doubt that Mireille Beauchamp is guilty of the offence charged.[30]

Because of her sincere religious convictions, Mrs. Beauchamp had removed her child from the public school system and was supervising her at home in a correspondence course offered by the Christian Liberty Academy.

The sincerity of Mrs. Beauchamp is very similar to the sincerity of the Mennonite parents who risked legal penalties for educating their children according to their beliefs in the *Wiebe* case. In Canadian jurisprudence, the operative principle with respect to freedom of conscience and religion is "sincerity of belief". In American jurisprudence, it is conviction as opposed to mere preference. A sincere belief or conviction is something you would endure severe legal sanctions in order to uphold. A preference, on the other hand, is something like a suit of clothes, which may reflect transient fashion. In *Wiebe*, the court referred particularly to the sincerity of Mennonite convictions in declaring the Alberta School Act of that day inconsistent with *The Alberta Bill of Rights*.

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[30] (1979) 10 R.F.L. (2d) 354 (Ontario Prov. Ct.), at p. 362.

The *Beauchamp* and *Wiebe* cases are no more than contemporary illustrations of the enduring value of John Locke's principles of broadmindedness and forbearance as set out in his *Letter Concerning Toleration* discussed above. These are the elements needed to ensure the cohesiveness of our pluralistic society. Where respect for such minority religious opinion is absent, the state assumes an intrusive role in the realm of conscience and religion which violates the first principles of both Western political philosophy and the law of *The Charter*.

This is not to say, of course, that the state does not have an important role to play in the visitation of religiously-based independent schools, as an integral part of an unobtrusive "registration" process. Here again, however, pursuant to the sequel to the *Jones* case, the onus in establishing that minimum educational standards are not being complied with should be on the educational authorities rather than on the independent school. It is only in such a manner that the interplay of the secular and the religious elements in the educational equation can both be maintained in their appropriate sphere in a pluralistic and liberal society. Although there is undeniably some administrative inconvenience in conferring such an unobtrusive "inspectorial" role on the provincial educational authorities, it is part of the price we must pay for living in a more humane and tolerant society.

Appendix 9

Statements of Principles With Respect to the Rights, Interests, and Responsibilities of Parents, the Government, and Children

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April 10, 1990

Summary

1. Parents have the right and responsibility to provide for the education of their children in accordance with their religious convictions.

2. The government of Saskatchewan has assumed the primary responsibility to provide elementary and secondary education programs to Saskatchewan students, through its two publicly funded dimensions, the public schools and the separate schools.

3. Every person has a right to a formal education.

4. The government has assumed the authority to exempt children of compulsory school age from attendance at a public school.

5. The government has assumed the responsibility for evaluating and certifying the academic achievement of secondary level students as they graduate from high school.

6. Provincial education policy should be consistent with the preservation and enhancement of the multicultural heritage of Canadians.

7. Public schools are no longer permitted to conduct religious exercises or to provide religious instruction.

8. Independent schools have a right to exist in Saskatchewan and parents have the right to enrol their children in such schools.

9. The government has the interest and the responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan.

10. Independent schools are not public authorities.

11. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.

12. In the case of alleged failure of parents or guardians to provide adequate education for their children, the burden of proof resides with the government.

13. When regulating independent schools, the government is in many cases regulating churches.

14. Substantive and procedural rights are inseparable.

15. Independent schools in Saskatchewan will be required only to be registered and not licensed.

16. Independent schools have the right to restrict access to members of their own group.

17. Independent schools have the right to restrict the employment of teachers to individuals sharing the same faith and practice as the parent group that is operating the independent school.

1. **Parents have the right and responsibility to provide for the education of their children in accordance with their religious convictions.**

The principle has been stated in many forms and in many places, such as *The Universal Declaration of Human Rights* [s. 26(3)]. The particular phraseology "in accordance with their religious convictions" is the one used by Mr. Justice La Forest in *Jones* v. *The Queen*.[1]

Even before the establishment by law of provincial educational systems in nineteenth-century Canada, this right existed in common law, and can also be supported on natural law premises as in *Chabot* v. *Lamorendiere*[2] where the Quebec Court of Appeal held that it was legally impermissible to impose Catholic religious instruction on a Jehovah's Witnesses' child.

In an elementary and secondary school setting, the freedom of conscience and religion that is guaranteed to "everyone" by subsection 2(a) of *The Charter* is primarily a right exercised by parents on behalf of children.

Complementary support for the rights of parents to educate and give moral instruction to their children may also, arguably, be found in s. 26 of *The Charter* which reads: "The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada." Insofar as parents have historically enjoyed a right to rear and educate their children, it could also receive sustenance from this provision.

Recent international covenants have reinforced the aforesaid right. In article 18(4) of *The International Covenant on Civil and Political Rights*[3], affirms, for example, the liberty of parents "to ensure the religious and moral education of their children in conformity with their own convictions". *The International Covenant on Economic, Social and Cultural Rights*[4] lays out a similar right for parents in section 13(3).

In the recent *United Nations Draft Convention on the Rights of the Child*[5], which is not yet in force, article 14 is to the same effect. Although the latter Convention, which was just put forward about a year ago, is not yet in effect, it carries with it the moral authority of the United Nations, and adds to the cumulative weight of the earlier declarations.

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[1] (1987) 31 D.L.R. (4th) 593.

[2] 12 D.L.R. (2d) 796 (Que. C. A.).

[3] UN GAOR, 21st Sess., 52 U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (in force for Canada, August 19, 1976).

[4] UN GAOR, 21st Sess., 49 U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (in force for Canada, August 19, 1976).

[5] E/CN.4/1989/29, 16 February, 1989.

It should be remembered that the above-mentioned Conventions which came into force for Canada on August 19, 1976[6], now form part of international law, and in international law are part of the common law of Canada.[7] While a local statute that clearly contradicted international law would be enforced in Canada, such a statute would violate Canada's international obligations. As Professor Peter Hogg says of *The Covenant on Civil and Political Rights*, its terms "are relevant to the interpretation of *The Charter*, by virtue of the rule that a statute (and presumably a constitution) should be interpreted as far as possible into conformity with international law".[8] Whether or not the mentioned covenants are actually implemented in local legislation, a nation such as Canada which has become a party to them is under a duty to act in conformity with their provisions, and it is the principles of public international law and not domestic law which govern the interpretation of treaties.[9]

In the United States the initial and still controlling precedent on the rights of parents to give their children a religious education outside of the public school system is *Pierce* v. *Society of Sisters*.[10]

2. **The government of Saskatchewan has assumed the primary responsibility to provide elementary and secondary education programs to Saskatchewan students, through its two publicly funded dimensions, the public schools and the separate schools.**

The origin of Canadian public education can be traced back to the establishment of common schools as "public authorities" in the United Province of Canada after 1841. Prior to that time, all schools had been private schools, operated preponderantly by the Anglican, Roman Catholic, Presbyterian and Methodist Churches.

From the beginning, provision was made for the establishment of both common schools and separate schools, the latter operated by adherents of the minority faith, whether Protestant or Catholic, whenever the majority of the minority faith in a particular common school district decided to establish a separate school district as well.

This was at the formative time that national systems of education were established in both Europe and North America. Governments then began to regard mass education as instruments of national policy. The resulting educational curricula represented a synthesis of Christianity and Enlightenment thought. A basic assumption of this new educational climate was that private schools were not equal to the task of providing education for everybody.

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[6] See notes 3 and 4, *supra*.

[7] See, e.g., *Foreign Legations Case*, [1943] S.C.R. 208; and *Saint John* v. *Fraser Brace Overseas Corp*. [1958] S.C.R. 263.

[8] P.W. Hogg, *Constitutional Law of Canada*, 2nd edition (Toronto: 1985), at p. 662.

[9] *Re Regina and Palacios* (1984) 45 O.R. (2d) 269 (Ont. C. A.).

[10] 268 U.S. 510 (1924). See also John C. Hogan, *The Schools, the Courts and the Public Interest*, 2d edition (Lexington Mass.: Lexington Books, 1985), at p. 135.

With Canadian Confederation in 1867, section 93 of *The Constitution Act, 1867*, which conferred legislative jurisdiction over education on the provinces, gave formal constitutional recognition in Canada to a pluralistic standard of education. Whenever Ontario or Quebec, in fact, derogated from the rights and privileges of defined religious minorities, the federal cabinet had the remedial power to restore such rights or privileges, intervening in an area of provincial jurisdiction with a federal measure reinstituting the pre-existing situation. That such an extraordinary recourse would be contemplated by federal action in a primary area of provincial jurisdiction shows the great sensitivity with which the Fathers of Confederation regarded minority religious educational rights.

In Saskatchewan, *The Northwest Territories Ordinance* of 1884 was the first legislation permitting the establishment of public schools. Modelled on the Ontario legislation, it also made provision for both public and separate schools. On entering Confederation in 1905, s. 17 of *The Saskatchewan Act*, which embraced the main parts of the provincial constitution, contained analogous provisions to those in s. 93, continuing in effect a framework for both public and separate schools.

3. Every person has a right to a formal education.

Like principle #1, this principle is also stated in many forms and in many places, such as *The International Covenant on Economic, Social, and Cultural Rights*, Article 13(1): "The States Parties to the present Covenant recognize the right of everyone to education."

The adjective "formal" refers to a structured program of learning, as distinguished from informal education in the home. While the adjective does not appear in the typical enunciations of this right, it is implicit in such enunciations.

Closer to home, the principle is also stated in *The Saskatchewan Human Rights Code*:[11]

> 13(1) Every person and every class of persons shall enjoy the right of education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of his or their race, creed, religion, colour, sex, marital status, physical disability, nationality, ancestry or place of origin.

The principle is further stated in Saskatchewan's *Education Act*, subsection 144(1):

> Every person between the ages of six and 21 years shall have the right to attend school in the division in which he or his parents or guardian are resident, and to receive instruction appropriate to his age and level of educational achievement in courses of instruction approved by the board of education in the school or schools of the division.

In *Jones* v. *The Queen*, in support of this right, Mr. Justice La Forest cited approvingly the following passage from *Brown* v. *Board of Education of Topeka*:

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[11] S.S. 1979, c. S-24.1.

> [Education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[12]

That Canada is a "free and democratic" society affects the type of education to which every person has a right. Also in *Jones* v. *The Queen*, Madam Justice Wilson cited approvingly the following passage from *R.* v. *Oakes*,[13] which would have interpretive force in this respect:

> The court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.

4. The government has assumed the authority to exempt children of compulsory school age from attendance at a public school.

Compulsory attendance laws originated in Ontario in 1871, and existed in most provinces and territories by the 1890s. Generally speaking, like Saskatchewan's present *Education Act*, sections 155 to 163, children of compulsory school were required to attend a public or separate school unless exempted from doing so by a local director or provincial superintendent of education.

Such laws represented an assumption of power by the state and a corresponding diminution of parents' rights. Before such laws were enacted, parents had the right not to give their children a formal education. After the enactment of such laws, parents no longer had this right.

Indeed, the constitutional validity of the assumption of such powers by the state was a central issue in *Jones* v. *The Queen*. Larry Jones, pastor of Western Baptist Church in Calgary, educated his three children and others in his church's school. He refused to apply to the Department of Education for approval of his church school as a private school under section 143(1)(e) of *The Alberta School Act*, because "requesting the state for permission to do what he is authorized by God to do would, he assert[ted], violate his religious convictions".

Furthermore, while he had no objection to a Department of Education inspector or a superintendent inspecting his church school and testing his children to ascertain their level of achievement, he also refused under section 143(1)(a) of the Act to apply for a certificate that his children were "under efficient instruction at home or elsewhere".

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[12] 347 U.S. 483 (1954), at p. 493.

[13] (1986) 24 C.C.C. (3d) 346.

Larry Jones believed that, since his right and duty to educate his children came from God, it violated his conscience and his religious convictions to acknowledge the school board, a secular institution, as the source of this right and obligation, contrary to *The Charter*, subsection 2(a). "To accept that the Board [could] grant him permission to carry out his God-given duty would be, he submit[ted], to accept the converse, i.e. that it [could] also refuse him such permission."

He further contended that *The School Act* deprived him of his right to educate his children as he saw fit in a manner that was not in accordance with the principles of fundamental justice, contrary to *The Charter*, section 7. In particular, the Act conferred on someone employed by the school system, i.e. someone with a vested interest in that system, the power to judge whether a person outside that system was providing efficient instruction; and the Act limited the evidence of efficient instruction to a certificate signed by an inspector or superintendent of schools, thus preventing him a full answer and defence to the charge.

La Forest J., speaking for the majority

With respect to *The Charter*, subsection 2(a), Mr. Justice La Forest found that the "purpose" of *The Alberta School Act* did not violate Larry Jones' freedom of religion. The Act did not give the government absolute control over the education of children. It did "not provide for compulsory attendance at schools controlled by a board, but for compulsory education." It recognized the right of parents to choose, say, a religiously-based education for their children provided that the government school authorities deemed the education to be efficient.

However, Mr. Justice La Forest did find that the "effect" of *The School Act* constituted some interference with Larry Jones' freedom of religion,[14] but that this interference was saved by section 1 of *The Charter*. Requiring those who seek exemption from the general scheme of education in the province to make application for this purpose was a reasonable limit on a parent's religious convictions concerning the upbringing of his children that was "demonstrably justified in a free and democratic society". "To permit anyone to ignore it on the basis of religious conviction would create an unwarranted burden on the operation of a legitimate legislative scheme to assure a reasonable standard of education."

Not only the parents but also the state had a compelling interest in the education of children. Education of the young was today a matter of prime concern to government everywhere and constituted a very significant part of every provincial budget.

Mr. Justice La Forest did not inquire how far the province could go in imposing conditions, such as the program of studies or qualifications of the teachers in his school, on the way in which Larry Jones provided instruction to his children if he had applied for registration of his academy as a private school or for a certificate of instruction. However, he did say:

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[14] Either an unconstitutional "purpose" or an unconstitutional "effect" can invalidate legislation. *Regina* v. *Big M Drug Mart* (1985) S.C.R. 331.

> Certainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant. In determining whether pupils are under "efficient instruction", it would be necessary to delicately and sensitively weigh the competing interests so as to respect, as much as possible, the religious convictions of the appellant as guaranteed by *The Charter*. Those who administer the province's educational requirements may not do so in a manner that unreasonably infringes on the right of parents to teach their children in accordance with their religious convictions. The interference must be demonstrably justified.

With respect to *The Charter*, section 7, Mr. Justice La Forest found that Larry Jones had not been deprived of his liberty to educate his children as he saw fit contrary to the principles of fundamental justice.

Notwithstanding that a school inspector or superintendent had a vested interest in the public school system, Larry Jones should not have presumed that they would necessarily be biased in certifying or failing to certify that instruction was efficient.

Some pragmatism was necessary in the administration of *The School Act* with respect to compulsory attendance. The province had to be given room to make choices regarding the type of administrative structure that would suit its needs without always an appeal to the courts.

It was sufficient to protect the individual against unfairness or the disregard of his rights by the school authorities when they came to deal with his application. However, if it could be established that the school authorities' actions were exercised in an unfair or arbitrary manner, then the courts could intervene.

> I have no doubt that if in exercising their functions the school authorities sought to impose arbitrary standards, i.e. standards extraneous to the educational policy under the Act, or if they in other respects acted in a manner that was fundamentally unfair, such as failing to examine the facts or to fairly consider the appellant's representations, the courts could intervene. But I am unable to categorize the issue as the appellant does.

Wilson J., dissenting

In a strong dissent, Madam Justice Wilson found, first, that neither the "purpose" nor the "effect" of *The School Act* offended religious freedom; rather the Act accommodated it.

> While *The School Act* makes no express reference to divine authority, it defers to parental authority by allowing home instruction and instruction in private schools, thereby accommodating the State purpose to the preferences of individual parents. It recognizes the very values for the appellant contends. If the statutory machinery has any impact at all on the appellant's freedom of conscience and religion which, for the reasons I have given, I doubt, it is an extremely formalistic and technical one.

Madam Justice Wilson found, second, that if *The School Act* had violated section 2(a) of *The*

Charter, it could not have been saved by section 1.

> There has to be a form of proportionality between the means employed and the end sought to be achieved. In particular, the means employed must impair as little as possible the right or freedom in issue. . . . The government has adduced no evidence to establish that having the parent apply for a certificate was the least drastic means of ensuring that their children were receiving efficient instruction. The legislature, for example, could have given the education authorities the power to inspect on their own initiative.

Madam Justice Wilson found, third, that Larry Jones had been deprived of his right to educate his children in accordance with his conscientious beliefs in a manner that was not in accordance with the principles of fundamental justice. Restricting proof of efficient instruction to the introduction of a certificate was an evidentiary limitation that did not give the appellant the opportunity adequately to state his case.

Nor was this violation of section 7 saved by section 1 of *The Charter*. The onus of proof lay on the government seeking to uphold the limitation. In this case "the government has put forward no justification for the one exclusive means of establishing efficient instruction."

In conclusion, the entire court concurred that compulsory attendance laws did not mean that every child had to attend public (or separate) school. The laws mandated compulsory education, but not education in a compulsory way. Evidently, freedom of conscience and religion in education no longer includes the freedom not to educate one's children.

Nonetheless, the court majority found the government's assumption of the authority to exempt children of compulsory school age from attendance at a public school represented some interference with parents' freedom of religion to educate their children in accordance with their religious convictions, but that such interference represented a reasonable limit that was demonstrably justified in a free and democratic society. Those who administered the province's education requirements had nonetheless to weigh delicately and sensitively the competing interests of the state and the parents so as to respect, as much as possible, the religious convictions of the parents. They could not impose arbitrary standards or act in a manner that was fundamentally unfair, such as failing to examine the facts or fairly to consider the parents' representations in a particular case.

5. The government has assumed the responsibility for evaluating and certifying the academic achievement of secondary level students as they graduate from high school.

This is indubitably the case in Canada today. However, recognizing that the United States has a different process of evaluating and certifying high school students, this did not have to be the case in Canada. Because of the greater involvement of the government in education, both secondary and post-secondary, from the very beginning of our country, this probably happened without much reflection.

In Saskatchewan, the Minister has this authority in *The Education Act*, sections 10(1)(j) and 372(e), and *The Education Regulations*, sections 25 to 29.

In a pluralistic setting, where the state has assumed the responsibility for measuring the scholastic ability of secondary level students, and where it acknowledges the right of independent schools to exist, at least partly on the grounds of conscience and religion, I would argue that it must not abdicate provision for educational measurement in the case of such independent schools.

To fail to provide for evaluating and certifying such students would be to penalize the students and their parents for exercising a constitutionally-recognized right of freedom of conscience. If failure to measure resulted in the non-admission of applicants to university, or to professional or other training or employment, a strong prima facie case of religious discrimination could arguably be made under section 15(1) of *The Charter*.

6. Provincial education policy should be consistent with the preservation and enhancement of the multicultural heritage of Canadians.

The phraseology comes from section 27 of *The Charter*, which now forms part of the interpretive framework within which all statutory enactments are to be developed, including provincial education law.

The Charter presents a whole system of rights or freedoms, all of which must be read together. With respect to education there is "freedom of conscience and religion" in ss. 2(a); the right to "life, liberty and security of the person" in s. 7; various equality rights in s. 15; minority language educational rights in s. 23; the important proviso in s. 26 that enumerated rights do not detract from other rights or freedoms (arguably, parental rights to raise and educate children in accordance with their religious beliefs) which are not expressly enumerated; and section 29 which enshrines historic denominational school rights such as those in s. 93 of *The Constitution Act, 1867*, as well as section 27. Nonetheless, many commentators have described the most significant innovations in *The Charter* to be the promotion of bilingualism and multiculturalism.

Section 23 of *The Charter* makes explicit provision for the establishment of official minority language schools "where numbers warrant". In the recent case of *Mahe* v. *A.-G. Alberta*,[15] the Supreme Court of Canada held that "where numbers warrant", francophone minorities in English Canada were entitled to their own school boards. Provinces must now make provision for the establishment of such boards as public authorities.

With specific reference to section 27, Mr. Justice Tarnopolsky has stated that language and religion are the two major manifestations of culture.[16] While section 27 would not appear to mandate the establishment of religiously-based schools as public authorities, as section 23 does for official minority language schools, it does support the existence of religiously-based schools as independent schools.

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[15] (1990) 68 D.L.R. (4th) 69 (S.C.C.).

[16] See Walter S. Tarnopolsky, "The Equality Rights, (Ss. 15, 27 and 28)", in Tarnopolsky and Beaudoin (eds.), *Canadian Charter of Rights and Freedoms: Commentary*, (Toronto: Carswell, 1982), where Professor Tarnopolsky (as he then was) discusses the relationship of multiculturalism as set out in section 27 of *The Charter* with, *inter alia*, religion, at pp. 437-442.

7. **Public schools are no longer permitted to conduct religious exercises or to provide religious instruction.**

Saskatchewan's 1901 *School Ordinance*,[17] which is still the relevant educational law which applies in the province in respect of religious instruction, makes provision for religious instruction in ss. 137-139. Subsection 137(2) enables local school boards to direct the opening prayer, while s. 138 stipulates that attendance during religious exercises is not compulsory for students whose parents or guardians object to religious instruction. According to s. 139, moreover, no student should be deprived of ordinary education given in such school. Religious education is encouraged, but there is no religious test prerequisite for ordinary schooling.

Recent Ontario cases call into serious question the constitutionality of these provisions in respect of public schools, although not of course in respect of separate schools.

In *Zylberberg* v. *Sudbury Board of Education*[18], the Ontario Court of Appeal held that local regulations requiring public schools to open and close each day with religious exercises, including the Lord's Prayer (subject to a right of non-participation for the children of non-concurring parents) were of no force and effect.

A second Ontario Court of Appeal decision has prohibited religious instruction in public schools in Elgin County, where more than 90 per cent of the affected children belong to Christian denominations.[19]

Although the two rulings have not been appealed to the Supreme Court of Canada, being authoritative decisions of the highest court in Ontario, they will doubtless be persuasive in other provinces, particularly in Saskatchewan and Alberta whose early educational legislation was derived directly from Ontario.

The Ontario Court of Appeal ruled that provisions for parents to exempt their children from either religious exercises or the teaching of religion were not sufficient protections of freedom of conscience and religion, since subtle pressures existed in such contexts to make children of religiously dissenting parents conform. Accordingly, the rulings probably also mean that provisions to exempt children from attendance at controversial classes like family life education are not sufficient protections either.

The two rulings probably further mean that public schools cannot teach academics from an overtly religious point of view, such as a Christian point of view. While the Ontario Court of Appeal has said that schools may teach about religion as, say, a sociological phenomenon that impacts our culture, they cannot teach religion *per se*. From a doctrinal point of view, their approach must be strictly neutral.

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[17] C.O., c. 75, s. 1.

[18] (1989) 52 D.L.R. (4th) 577 (Ont. C. A.).

[19] Robert Sheppard, "Ruling on Religion in Public Schools Begs Some Tough Questions", *Globe and Mail* (Toronto: Feb. 1, 1990), p. A7.

If Saskatchewan parents want to teach their children from a particular religious point of view other than Roman Catholic, they have no choice except independent schools or home-schooling. Saskatchewan legislation has made provision for the establishment of Roman Catholic separate schools as public authorities, and now for fransaskois schools, but not for other types of schools.

There is provision for only one separate school division, either Protestant or Catholic, coterminous with the public school division. And there has only been provision, from 1841 to the present day, for pan-Protestant separate schools, not Protestant schools affiliated with a particular Protestant denomination.

This raises the interesting question: "Are provinces now obligated to make provision for the establishment of religiously-based schools as public authorities, either pan-Protestant schools or school affiliated with a particular Protestant denomination?"

In the light of the recent decision affirming, on constitutional grounds, the right of the Province of Ontario to provide full funding to the end of high school for the Catholic separate school system in the province,[20] I would argue that provinces like Saskatchewan are not so obligated.

An issue raised by some of the intervening private schools in this case was whether the extension of funding to the final two years of Catholic high schools in Ontario would derogate from the "equality rights" of private schools under s. 15 of *The Canadian Charter of Rights and Freedoms*, which did not receive similar public funding. In deciding the case, the Supreme Court held that section 93, under which the increased Catholic funding could be validly maintained, was an implied exception to the Charter provisions on "equality rights", since it formed part of the "Confederation bargain" without which the provinces of Ontario and Quebec would not have entered the federation in 1867.[21] Accordingly, to give s. 15 priority over s. 93 would countervail unacceptably a constitutional provision from which, on historical grounds, there should be no derogation.

8. Independent schools have a right to exist in Saskatchewan and parents have the right to enrol their children in such schools.

This statement is contained in the Minister's letter of invitation to stakeholder groups to name representatives to the Independent Schools Advisory Board.

Based on the first seven principles, derived as they are from the international declarations, the common law, and the higher law of *The Charter*, it seems indisputable to me that independent schools have a right to exist in Canada. Indeed, in *Caldwell et al.* v. *Stuart et al.*,[22] the Supreme Court ruled in respect of a Roman Catholic independent school in Vancouver:

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[20] *Ref. re An Act to Amend The Education Act* (1987) 1 S.C.R. 1148, 40 D.L.R. (4th) 18.

[21] *Ibid*, p. 60.

[22] (1984) 2 S.C.R. 603.

> There may be no specific enactment of the Legislature of the Province of British Columbia which confers this right. It is, however, an unquestioned fact that Roman Catholic schools have existed in British Columbia since the Province was formed, beside, but separate from, the public school system. For many years, they have been entitled to public financial support, and attendance of pupils has been recognized as a substitute for compulsory attendance at public schools. There can be no serious question that Roman Catholic schools, having their special nature, have functioned and continue to function lawfully in the Province.

It is manifest that freedom of conscience and religion in education is an important freedom, assigned a particularly high status in the Canadian constitution. It is noteworthy that this freedom is enshrined in section 2 of *The Charter*, subtitled "Fundamental Freedoms", which section enumerates the first such freedoms found in the whole document. Arguably the rights of freedom of conscience, religion, assembly, and expression set out therein are logically prior to all the other rights and freedoms which come later. Without observance of these initial freedoms, all the others would disintegrate. Such freedoms are part of the societal consensus reflecting a basic toleration of minority opinions and a right to dissent.

Where parents do not agree with the prevailing standards and curriculum of the public school system, in exercising their freedom of conscience and religion under *The Charter*, they have the option of seeking elementary and secondary school education for their children alternative to that provided in the public schools. Some parents *do* conscientiously object to the teaching of evolution in the schools, at least without equal time for creationism, to the assignment of specific works of literature in the public schools, which they find unsuitable, and to other materials. Where opposition to such materials is founded on deeply-held religious convictions, society must permit the establishment of Christian schools.

It is noteworthy that section 2(a), which inspires a secularistic trend in the public school system, is the same one that guarantees parents' rights to educate their children in accordance with the religious convictions. As this secularistic trend continues, so is the demand for independent schools likely to continue.

The essence of most independent schools is a particular educational philosophy, usually a religious philosophy, most commonly a Christian philosophy. Such an education -- emanating from a Christian world view -- is clearly a legitimate education, found historically in the public schools themselves.

This has important implications for the choice of curricula in independent schools. Given the secularistic trend in public education, it seems obvious to me that courses and programs developed for public schools are not necessarily going to be appropriate for a Christian school. For parental choice to be meaningful, the state must acknowledge certain freedoms for independent schools in respect of curricula, courses, and programs.

9. The government has the interest and the responsibility to put in place a legislative and regulatory framework for the operation of independent schools in Saskatchewan.

The use of the term "interest" is deliberate. Strictly speaking, the state does not possess "rights", it possesses "interests". Individuals, not the state, possess "rights".

In *Jones* v. *The Queen*, Mr. Justice La Forest makes specific reference to the interest of the state in the education of its citizens:

> Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society. From an early period, the provinces have responded to this interest by developing schemes for compulsory education. Education is today a matter of prime concern to government everywhere. Activities in this area account for very significant part of every provincial budget.[23]

On October 10, at the first meeting of the Independent Schools Advisory Board, we agreed that the interests of the state with respect to independent schools included, but were not necessarily limited, to the following:

(1) That all Saskatchewan children have access to (i.e. are not deprived of) a common, generally accepted standard of education; and

(2) That independent schools do not promote values which conflict with the rights, freedoms and moral principles upon which our society is based.

These in turn came from the policy framework laid down by the Minister in his letter of invitation.

On June 27, 1988, in his response to the Dirks' Report, the Minister in effect stated that the responsibility of the state with respect to independent schools included, but was not necessarily limited, to the following:

(1) To give independent schools a formal legal status.

(2) To clarify the position of their pupils in terms of compulsory attendance.

(3) To ensure that independent schools maintain a high quality of education.

On October 10, at the first meeting of the Independent Schools Advisory Board, we in effect added to this list – that the Minister make regulations governing the operation of independent schools:

(4) That respect the liberty of parents to enrol their children in independent schools in order to give their children an education in conformity with their philosophical convictions; and

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[23] *Supra*, at p. 592.

(5) **That permit students in independent schools to be accepted in the wider society at large for the education that they have achieved at an independent school, whether these students choose**
   (a) **to transfer to another school;**
   (b) **to seek employment in the public or private sectors; or**
   (c) **to pursue post-secondary studies.**

These two responsibilities are examples of the principle that, whenever a "right" is proclaimed, someone in society has a corresponding "responsibility" to bring effect to this right. Often that "someone" is the government.

10. Independent schools are not public authorities.

Public schools and school divisions are "public authorities". They are established under *The Education Act* and are clothed only with such powers as are conferred upon them by statute, or perhaps in rare instances by common law.[24] As statutory creations, they can typically do only those things which the parent Act authorizes them to do.[25] There are a whole congeries of powers in *The Education Act* empowering them to do certain things.

By contrast, the truly distinguishing feature of an independent school is that it is not a public authority. Section 2(s.1) of Saskatchewan's *Education Act* specifically defines an "independent school" as an institution:

(i) in which instruction is provided to pupils of compulsory age; and
(ii) which is controlled and administered by a person that is not a public authority.

Independent schools are usually established as non-profit corporations and as such have legal powers analogous to those of natural persons.[26] They would, of course, be subject to any limitations imposed on them by the Act pursuant to which they were incorporated, but outside of such limitations they would possess the same powers as individuals possess such as the right to enter into contracts or to borrow money.

As explained Larry Anderson's memorandum to Michael Littlewood,[27] the powers of an independent school are limited or restricted in three general ways:

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[24] Cf. L'Heureux-Dube J. in *Knight* v. *Indian Head S.D. No. 19* (1990) 69 D.L.R. (4th) 489 (S.C.C.).

[25] For such entities to go outside of the parameters of their statutory authorization would violate the principle of "the rule of law", ef. *Roncarelli* v. *Duplessis* (1959) S.C.R. 121.

[26] Cf. Lord Haldane in *Bonanza Creek Gold Mining Co.* v. *R.* (1916) 1 A.C. 566.

[27] January 29, 1990. Larry Anderson is a Crown Solicitor in the Civil Law Division of the Department of Justice.

(1) "In the first instance, by laws that restrict the rights of individuals or corporations." For example, independent schools or employees of independent schools are not permitted, anymore than any person in Canada, to commit fraud, slander, libel, or physical abuse of children.

(2) "In the second instance by the Act under which it is incorporated, its incorporating documents, its by-laws, or any agreement binding on its members, which might impose any type of limitation or control on its activities or powers." These may be referred to as self-imposed restrictions.

(3) "In the third instance, by explicit provisions in legislation relating to activities it is undertaking. Typically, such provisions arise at the point where the activities of persons comes into contact with matters of public concern. In the case of independent schools, these would include applicable provisions of *The Education Act*, examples of which would be recognition of the school for purposes of compulsory attendance, exemption from municipal property taxes, recognition of the school's educational program for purposes of Division IV credits, and public funding."

In my opinion, the different legal status of independent schools -- that they possess the same powers as individuals subject to the above restrictions -- leads more or less inexorably to different categories of independent schools. Depending on which criteria a particular school meets, the government would recognize the school, at one extreme, for purposes of compulsory attendance, and at the other extreme, for public funding.

Also in my opinion, pending further Supreme Court interpretations of section 15(1) of *The Charter* with respect to education, the different legal status of independent schools implies that the government is not legally required to fund independent schools. When legislation makes provision for the establishment of public authorities in any area, the same legislation usually makes provision for the financing of such authorities. The simple recognition of independent schools in legislation would not carry with it the same obligation.

Furthermore, if the government does decide to fund a certain category of schools that meet certain criteria, the government is not required to fund all independent schools equally, only those in the same category equally.

11. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.

The phraseology comes from *Regina* v. *Big M Drug Mart*, the first "freedom of conscience and religion" case under *The Charter*.

> What unites enunciated freedoms in the American First Amendment, s. 2(a) of the Charter and in the provision of other human rights documents in which they are associated is the notion of the centrality of individual conscience and the inappropriateness of government intervention to compel or to constrain its manifestation.

> It should be noted, however, that an emphasis on freedom of conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity to a free and democratic political system that American jurisprudence has emphasized the primary or "firstness" of the First Amendment. It is this same centrality that in my view underlies their designation in *The Canadian Charter of Right and Freedoms* as "fundamental". They are the *sine qua non* of the political tradition underlying the Charter.[28]

Indeed, Western political philosophers place freedom of conscience at or near the top of the distinctive features of Western Civilization and trace the concept to both Greek and Judeo-Christian roots. The Greek element consisted in the development of the mind in the quest for truth, and the Judeo-Christian element emphasized the importance of moral obligation to God as found in the conscience. It is often said that these twin pillars of the Hebraic-Christian and Hellenistic heritage are among the main supports of Western culture.

With respect to education, the principle would apply, among other things, to the election of boards of education, both public and independent. Electors and parents, in deciding who is to represent their interests in the education of children, are presumed to cast their ballots in a "free and informed" manner.

The principle would also apply to parental decisions to enrol their children in an independent school, particularly when the parents pay tuition fees in support of this decision. Our democratic system assumes that this was a free and informed choice unless demonstrated otherwise. Even where the views on religion or the values of children diverge from those of the parents, the courts have generally allowed the parents, within limits, to impose their views on their children.

12. In the case of alleged failure of parents or guardians to provide adequate education for their children, the burden of proof resides with the government.

The principle is a general one, arising from the previous principle. The phraseology comes from the Ontario case, *Lambton County Board of Education* v. *Beauchamp*.[29] Because of her sincere religious convictions, Mrs. Beauchamp had removed her child from the public school system and was supervising her at home in a correspondence course offered by the Christian Liberty Academy. The court held:

> Those seeking to invoke the compulsive powers of the state in the face of the alleged failure of the parent or guardian to provide an adequate alternative, and thereby to impose the sanctions of a quasi-criminal legislation, have a substantial burden of proof.

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[28] *Supra*, at p. 105.

[29] (1979) 10 R.F.L. (2d) 354 (Ontario Prov. Ct.), at p. 362.

> In this case the evidence tendered on behalf of the Lambton County Board of Education falls short of establishing beyond a reasonable doubt that Mireille Beauchamp is guilty of the offence charged.

13. When regulating independent schools, the government is in many cases regulating churches.

This is simply a fact. Ever since the dawn of Christianity, the church has been involved with the education of children, but it is an important fact to keep in mind. In such cases, the principles associated with the separation of church and state apply, which principle also had its origins with the early church. In the post-Reformation period, the principle has been attributed to Martin Luther and his doctrine of the two kingdoms (temporal authority and the Kingdom of God), but above all to John Locke and his *Letter Concerning Toleration*, published in 1689.

Specifically, Locke wrote his *Letter* in support of the nonconformists' resistance to Anglican uniformity in Restoration England. While the uniformists argued that nonconformists such as John Bunyan could believe what they wanted to believe so long as they did not practise their beliefs openly, Locke argued that religious belief could not be so separated from religious practice. To enforce conformity of practice was to turn people into hypocrites and into enemies, and to cause unnecessary human suffering. People did not readily change their beliefs, even on the point of death, because hypocrisy was a sin that was destructive of one's supreme interest, namely, eternal salvation.

According to Locke, the state and the church had different spheres of concern, that of the state, the purely secular, and that of the church, the sacred. The state was properly concerned with the promotion of material goods, the church with the promotion of spiritual goods. In particular, the promotion of "true religion" was not a concern of the state, since, in any event, there was no known criteria for determining which was the true religion.

Within their respective spheres of concern, while the power of the state was ultimately coercive, that of the church was purely persuasive. By church, Locke did not mean a national church, but rather a local assembly -- a body of believers united by a common faith and practice. Explicitly, Locke defined a church as:

> a voluntary Society of Men, joining themselves together of their own accord, in order to the public worshipping of God, in such a manner as they judge acceptable to him and effectual to the Salvation of their Souls.[30]

To Locke, an established national church was among the greatest threats to peace.

Admittedly, this distinction between the secular and the sacred, was not always clear-cut. While the coercive power of the state should not generally enter to the arena of conscience, there always existed borderline cases. Locke himself distinguished "speculative opinions", such as the Roman

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[30] John Locke, *A Letter Concerning Toleration* (Indianapolis: Hackett Publishing Company, 1983[1689]), p. 28.

Catholic belief in transubstantiation, which did no injury to one's neighbour, from "practical opinions", which might be seditious, because the individual might be a servant of a foreign power. Where a church's activities began to impact upon the realm of the material, then the state might have a legitimate claim against the activities of a particular church. But in all such instances, he argued, the burden of proof rested properly with the state, and the only good grounds were when public security or the rights of other individuals were being threatened.[31]

In cases where the coercive power of the state did, inadvertently or otherwise, enter into the arena of conscience, individuals were to resist passively, not violently. They were not obligated to obey a law prescribing what they sincerely believed to be a sin, but they were obliged to suffer the punishment, until by the force of their example, they persuaded the state to change the law. Thus religious toleration did not lead to civil war, as the uniformists argued, but rather to peace. It was the state's enforcement of uniform religious practice that led to civil war, such as the British civil war of 1642 to 1652.

Having stood the stood the test of time, Locke's *Letter* is regarded as the intellectual foundation for the international rights movement from then until the present day. While Locke's ideas were first expounded with respect to freedom of conscience and religion, they have since been extended to moral and political beliefs. As such, his ideas are now an integral part of the normative culture of Western democracies, and in particular, form the foundation for *The American Bill of Rights*, *The United Nations Declaration on Human Rights*, and *The Canadian Charter of Rights and Freedoms*.

In my opinion, the Independent Schools Advisory Board must recognize that independent schools are to some extent the non-conformists of today. It is no accident that most independent schools are religiously-based. The denominations and churches that are operating independent schools are simply performing one of the historic roles of the church in Western society, that of dissent from prevailing societal trends such as the secularistic trend in public education.

While the state is legitimately concerned with minimum educational standards, uniform requirements in respect of, say, curriculum or the qualifications of teachers, by requiring teachers to be state-certified according to provincial regulatory norms, would likely be held unnecessarily intrusive into the affairs of religiously-based schools, and a violation of the principle of the separation of church and state.

Indeed, in *Regina* v. *Wiebe*[32], an Alberta court held that the particular regulatory requirement that approved private schools should employ certified teachers was an unnecessary intrusion of the state into the freedom of religion of the defendant. The *Wiebe* case, while not technically binding, would be highly persuasive here in Saskatchewan, since the "freedom of religion" is the same and the statutory basis of the educational systems is similar in the two provinces. Freedom of religion is essentially inseverable.

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[31] For Locke, the rights of children, before they reached the age of maturity, did not come into play. That is, Locke, like all other philosophers, did not accept the concept of the autonomous child. Beyond the age of maturity, however, an adult was free to choose his own faith and practice, irrespective of what his parents believed and practised.

[32] (1978) 3 W.W.R. 36 (Alberta Prov. Ct.).

This does not mean that anyone can avoid state regulations, for example, with respect to the state-certification of teachers by standing behind the separation of church and state. In Canadian jurisprudence, the operative principle with respect to freedom of conscience and religion and the separation of church and state is "sincerity of belief". In American jurisprudence, it is conviction as opposed to mere preference. A sincere belief or conviction is something you would endure severe legal sanctions in order to uphold. A preference, on the other hand, is something like a suit of clothes, which may reflect transient fashion. In *Wiebe*, the court referred particularly to the sincerity of Mennonite convictions in declaring *The Alberta School Act* of that day inconsistent with *The Alberta Bill of Rights*.

In *Jones*, Mr. Justice La Forest also referred to the sincerity of Larry Jones' religious convictions:

> A court is in no position to question the *validity* of a religious belief, notwithstanding that few share that belief. But a court is not precluded from examining into the sincerity of a religious belief when a person claims exemption from the operation of a valid law on that basis.[33]

The *Beauchamp*, *Wiebe*, and *Jones* cases are no more than contemporary illustrations of the enduring value of John Locke's principles of broadmindedness and forbearance as set out in his *Letter Concerning Toleration* discussed above. These are the elements needed to ensure the cohesiveness of our pluralistic society. Where respect for such minority religious opinion is absent, the state assumes an intrusive role in the realm of conscience and religion which violates the first principles of both Western political philosophy and the law of *The Charter*.

This is not to say, of course, that the state does not have an important role to play in the visitation of religiously-based independent schools, as an integral part of an unobtrusive "registration" process. Although there is undeniably some administrative inconvenience in conferring such an unobtrusive "inspectorial" role on the provincial educational authorities, it is part of the price we must pay for living in a more humane and tolerant society.

14. Substantive and procedural rights are inseparable.

This is a fundamental principle of our Anglo-American constitutional heritage that goes back to *The Magna Carta* in 1215 and *The British Bill of Rights* in 1689. Recent events in the Soviet Union demonstrate graphically how substantive rights unaccompanied by effective procedural rights count for little.

Article 72 of *The Constitution of the U.S.S.R. (1977)* provides that "each Union Republic shall retain the right freely to secede from the U.S.S.R."[34] As far as I know the Soviet federal constitution is the only one in the world to give its constituent local units such a right to secede. Yet, when rumblings of secession took place in Lithuania early in 1990, Soviet tanks hurtled through the streets of Vilnius.

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[33] *Supra*, at p. 591.

Stalin's 1936 Constitution was also thought to be an outstanding model of advanced rights and freedoms, but as Professor S. E. Finer says of one of its leading provisions, "The freedom of religious worship guaranteed by Article 124 of the Stalin (1936) Constitution of the U.S.S.R. was notoriously restricted and impaired".[35]

In order for rights to be significant there must be a procedure to give them practical operation. In American jurisprudence, the term "due process" in the Fifth and Fourteenth Amendments has both procedural and substantive connotations.

In *Den* v. *The Hoboken Land and Improvement Co.*,[36] Mr. Justice Curtis said that the words "due process of law" were meant to have the same meaning as "by law of the land", in *Magna Carta*. He said that the phrase was a restraint on all three branches of government. Congress could not make any process "due process". The concept was bound up with notions of equity and fair dealing.

Similarly, section 7 of *The Canadian Charter* uses the term "fundamental justice" in lieu of "due process" when it asserts that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice", but the term "fundamental justice" is used in much the same sense as its American counterpart.

In the *Jones* case, both Mr. Justice La Forest, speaking for the majority, and Madam Justice Wilson, dissenting, considered both the religious freedom in subsection 2(a) and the liberty right in s. 7 together for the purposes of determining Larry Jones situation under *The Charter*. The two go together, the first being substantive, and the second, procedural.

As both Justices said, parents like Larry Jones are really asserting a "liberty" right under s. 7 to educate their children in accordance with their religious convictions. Once a liberty right to educate one's children in an independent school is deduced from *The Charter*, conceded by public authority, and manifested in the operation of the school, the state cannot intrude arbitrarily into such an area except in accordance with the tenets of "fundamental justice".

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[34] S. E. Finer (ed.), *Five Constitutions: Contrasts and Comparisons* (Harmondsworth: Penguin, 1979), at p. 165.

[35] *Ibid*, at p. 18.

[36] 15 L. Ed. 372 (1856) (U.S.S.C.).

15. Independent schools in Saskatchewan will be required only to be registered and not licensed.

This principle comes from the objectives of the Independent Schools Advisory Board, as agreed to on October 10, 1989, which in turn comes from the Minister's response to the Dirks' report, June 27, 1988.

This should be seen as a political decision. In the *Jones* case, the Supreme Court held, in the Alberta context, that requiring parents of children in private schools either (1) to seek approval from the Department of Education for the operation of their private school, or (2) to seek a certificate of efficient instruction from a Department of Education inspector or superintendent represented a reasonable limit on parents freedom of religion. Requiring those who seek exemption from the general scheme of education in the province to make application for this purpose was "demonstrably justified in a free and democratic society".

Nonetheless, in the sequel to the *Jones* case, Larry Jones went to jail rather than acknowledge the government as the source of his right to education his children in accordance with his religious convictions. "To accept that the Board [could] grant him permission to carry out his God-given duty would be, he submit[ted], to accept the converse i.e. that it [could] also refuse him such permission." Subsequently, the Alberta government amended *The School Act* in 1988, providing for a less obtrusive registration process as opposed to a licensing process for schools like Larry Jones'.

In Saskatchewan, Gordon Dirks found (and the Minister of Education accepted in June 1988) that a requirement to seek approval for the operation of an independent school represented "an impractical and divisive means for the Saskatchewan government to ensure that society's legitimate interest in the satisfactory instruction of children has been met."[37] Instead, Dirks recommended that the government of Saskatchewan put in place a regulatory mechanism

> which places the onus for inspection upon Department of Education officials, specifies criteria to be used when inspecting private schools, does not compel locally-employed Directors of Education to inspect private schools, places the burden of proof upon the Department of Education to persuade a competent third-party tribunal or court that a particular private school does not meet the test of satisfactory instruction and requires private schools to provide the Department with the necessary statistical and identifying information respecting the private school and its pupils.[38]

The celebrated *Scopes* case and the *Jones* case are examples of political decisions calculated to minimize the adverse effects of prior legal decisions on freedom of conscience. Although Scopes lost his legal case on the right to teach evolution in the Tennessee schools, he won in the forum of public opinion, and his cause has triumphed today. So, too, was Larry Jones' defence of religious freedom ultimately successful.

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[37] Gordon Dirks, *A Review of Private Schooling in Saskatchewan*, at pp. 44-45.

[38] *Ibid*, p. 46.

In the case of religiously-based independent schools, the very raison d'être of which is grounded on the strong religious convictions of their adherents, a system of registration involving a notice of intent to operate meets the state's interest effectively. Licensing, involving seeking permission to operate, is unnecessarily offensive to the parents of children in religiously-based schools.

Another Canadian example of political decisions calculated to minimize the effects of prior legal decisions is subsection 92(a) of *The Constitution Act*, 1982, which overcame the adverse effects to resource-producing provinces like Alberta and Saskatchewan of the S.I.G.O.L. and Central Canada Potash cases decided by the Supreme Court in 1977 and 1978. The cases prohibited the "indirect taxation" of oil, or the provincial marketing and pricing of potash when the effects were felt mainly extra-provincially. Premiers Lougheed and Blakeney found the decisions unsupportable and insisted upon the addition of subsection 92(a) to the 1982 constitution, which countervailed the court decisions, as their price for endorsing Trudeau's patriation of the constitution.

16. Independent schools have the right to restrict access to members of their own group.

The Saskatchewan Human Rights Code,[39] in section 13, assigns an important place to the education of religious minorities:

> 13(2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or physical disability, where it enrols persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrols persons who are physically disabled.

It is noteworthy that subsection 13(2) expressly permits schools to follow a "restrictive policy" respecting enrolment when they are "conducted by a religious order or society". This pioneer provincial enumeration of human rights in Canada accordingly contained a seminal provision enshrining a right to education for those who dissented from mainstream educational or religious systems on grounds of belief.

Even Saskatchewan's separate schools have the right to restrict enrolment to Catholics. For non-Catholics, enrolment in a separate school is a privilege, not a right.

17. Independent schools have the right to restrict the employment of teachers to individuals sharing the same faith and practice as the parents operating the independent school.

The Supreme Court of Canada affirmed this principle in an important 1984 decision, *Caldwell et al* v. *Stuart et al.*[40] At issue was a conflict between two legally established rights: (1) that of a religious group to carry on its activities in the operation of its denominational school according to its religious beliefs and practices; and (2) that of the individual to freedom from discrimination in employment in respect of religious beliefs and practices. In this particular case, an independent Catholic school in Vancouver had dismissed a Catholic teacher who had disregarded the canon law of the church by marrying a divorced person in a civil ceremony.

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[39] S.S. 1979, c. S-24.1.

[40] (1984) 2 S.C.R. 603.

The court resolved this conflict in favour of the independent Catholic school.

> The right of equality of opportunity, free from discrimation, which is protected by section 8 [of *The British Columbia Human Rights Code*] is characterized as a right based on a *bona fide* qualification in respect of that employment. . . . Ordinarily, a person who is academically qualified and duly licensed by the proper authority, would certainly possess the *bona fide* qualifications for employment as a teacher in a public school. . . . This result may not always follow and particularly in cases relating to denominational schools. As has been pointed out, the Catholic school is different from the public school. In addition to the ordinary academic program, a religious element which determines the true nature and character of the institution is present in the Catholic school. To carry out the purposes of the school, full effect must be given to this aspect of its nature and teachers are required to observe and comply with the religious standards and to be examples in the manner of their behaviour in the school so that students see in practice the application of the principles of the Church on a daily basis and thereby receive what is called a Catholic education. Fulfilment of these purposes requires that Catholics observe the Church's rules regarding marriage. It must be celebrated in the Church and the marriage of divorced persons is not recognized.

Appendix 10

Saskatchewan School Trustees Association

To: Bill Wells

April 24, 1990

From: LaVonne Beriault

Re: **Regulation of Independent Schools with Respect to the Curriculum and Qualifications of Teachers**

I have had the opportunity to read Professor McConnell's "Statement of Principles" and the material he cites in support of those principles. Although I would take issue with some of his statements in other areas, I understand that your request of me is to examine the above noted matters in particular.

Jones v. *The Queen*, [1987] 1 D.L.R. (4th) 569, a 1986 decision of the Supreme Court of Canada, is the leading case on the issue of the balance of the governmental interest and an individual's rights in educating children. Pages 44-45 of Professor McConnell's paper provide the factual background in that case. His summary of the Supreme Court's decision is found on pages 45-47:

The two issues before the Supreme Court were:

1) whether the Alberta legislation requiring Pastor Jones to apply for a certificate of efficient instruction offended the freedom of religion section of *The Charter*;

2) whether the Albert legislation which provided that school officials determine whether students were receiving "efficient" instruction offended the liberty section of *The Charter*.

On the first question, contrary to Professor McConnell's statement on page 47 (first sentence, fifth paragraph), four out of the seven judges found that the requirement to seek such a certificate from the authorities stipulated by the government did *not* offend Pastor Jones' freedom of religion. There is a governmental interest in the education of the young. It is not a violation of an individual's religious freedom for the government to ensure that minimum standards are maintained. The remaining three judges found that, to the extent that Pastor Jones sincerely believed that to request a certificate from governmental authorities was contrary to his religious belief that God had the authority over the education of his children, there was some interference with his freedom of religion. However, the province has a "compelling" interest in the education of the young and, therefore, its "limit" of requiring Pastor Jones to seek a certificate of efficient instruction is a reasonable one. Therefore, there is no violation of section 2(a) of *The Charter*.

On the second question, six out of the seven judges determined that there was no violation of section 7, the "liberty" section, of *The Charter*. Quoting from the headnote, the majority found:

> The province has a compelling interest in the quality of education and it has provided a system in *The School Act* to ensure that the requirements it considers necessary to advance this interest are complied with. The province may validly deal with educational policy in the Act itself or by means of regulations or by designating officials to particularize the requirements within the general confines of the Act. Provinces must be given room to make choices regarding the type of administrative structure that will suit their needs unless the use of such structure is in itself so manifestly unfair, having regard to the decision it is called upon to make, as to violate the principles of fundamental justice. The province was not required to have the issue of efficient instruction determined by a court but could as Alberta designate school authorities to make that determination.

The one dissenting judge on this issue dissented only on the basis that, in facing the possibility of imprisonment for not abiding by the provisions in the Alberta *School Act*, a person charged with an offence should be able to produce his or her own evidence of "efficient" instruction before the court determining the matter. A certificate by a governmental official should not be the only basis of determining whether a child is under "efficient" instruction outside of the public school system.

Throughout the judgment it is clear that the Supreme Court has confirmed that the government has a compelling interest in the education of children and that it is entitled to ensure that minimum standards of education are being met. Mr. Justice LaForest, in writing for the majority on the second issue, stated as follows:

> I have already indicated that the province has a compelling interest in the quality of education and what it has done by the Act is to provide a system to ensure that the requirements it considers necessary to advance this interest are complied with. This it did by providing for certain standards in *The School Act* and the regulations, and by delegating to the school authorities the power to spell out the details in order to meet the variegated needs throughout the province. The policy obviously involves both content and efficiency of instruction, an expression that must be viewed in terms of the provincial educational policy, not in the dissociated manner the appellant seems to advance. The province may, if it chooses, deal with educational policy in the Act itself or by means of regulations or by designating officials to particularize the requirement within the general confines of the Act. In a word, the school authorities are participating in the elucidation of an educational policy the province has a compelling interest in carrying out. Of course, these authorities have a vested interest in the system. But it seems normal enough to refer a question of efficient instruction within the meaning of *The School Act* to a school inspector or a superintendent of schools who is knowledgeable of the requirements and workings of the educational system under *The School Act*.

Clearly, the Court is aware that the persons best able to determine minimum standards of education are educators rather than the courts. Of course, those minimum requirements cannot be determined in the abstract or in an arbitrary manner. Mr. Justice LaForest has given some guidance. At page 599 he stated:

> There can be no precise definition of what constitutes efficient education. The question must necessarily be left for someone to determine. Of course, it cannot be decided in the abstract or in an arbitrary manner. The discretion accorded by s. 143(1)(a) must necessarily be determined in accordance with the requirements of *The School Act* as they operate in a practical setting. While some guidelines could probably be spelled out, in many ir not all aspects, simply requiring efficient instruction may. from a practical standpoint be as precise a standard as the nature of the subject-matter will allow; in any event such a standard in this context is not unreasonable. And who is more qualified to consider the question than a Department of Education inspector or a Superintendent of Schools, the very officials to whom the discretion is given by the provision? Should the decisions of these official in performing their duty unduly infringe on the appellant's freedom of religion or his liberty, he can raise the issue in the courts in the manner I shall hereafter describe.

In seeking to set out some guidelines for efficient instruction, I can see no arbitrariness or unreasonableness in stipulating that the persons who deliver that instruction have been certified in some way as having an adequate background to be able to teach effectively. I know of no religious beliefs which would hold that persons who have such a certificate are not proper teachers. Even if there were, I submit that section 1 of *The Charter* would allow the government to insist that there be evidence that a teacher employed by an independent school be an effective teacher. The *Jones* case supports the idea that the province may use a board such as the Board of Teacher Education and Certification to determine that question.

On the issue of the curriculum, the government's compelling interest in a child's education must extend to a certain minimum content in that education. I am unconvinced that the provincial curriculum with its built in flexibility violates anyone's freedom of religion but, if it did, the province's interest certainly extends to allow a reasonable limit on that freedom to the extent that there be a minimum content level. The "core curriculum" means that the province has decided what that minimum is and the courts would be reluctant to interfere with a province's standard especially where that standard intrudes very minimally, if at all, with an individual's freedom of religion.

In conclusion, the Supreme Court has adamantly confirmed the government's interest in ensuring that minimum standards of education are being met and that the government may set those standards and the mechanism for enforcing them provided it does not do so in an arbitrary or unreasonable way. It is submitted that requiring of minimum guidelines, the employment of certified teachers and the teaching of the provincially determined curriculum are neither arbitrary or unreasonable.

Appendix 11

Gauley & Co.

Barristers and Solicitors

May 11, 1990

Refer to: R. M. Beaton
Jim Russell

Saskatchewan Teachers' Federation
2317 Arlington Avenue
Saskatoon, Sask.
S7J 2H8

Attention: Fred Herron and Derwyn Crozier-Smith

Dear Fred and Derwyn:

Re: Minister's Advisory Board on Independent Schools

You have asked us for our legal opinion on some of the issues which have come up in relation to the Minister's Advisory Board on Independent Schools. In this regard, we have reviewed the following documentation:

1. Your memorandum to Harry Dahlem dated March 22, 1990;
2. Undated legal opinion of Professor Howard McConnell;
3. Legal opinion and memorandum of LaVonne Beriault dated April 24, 1990 to Bill Wells;
4. Presentation to the Teacher Education Certificate and Standards Committee of the Minister's Advisory Board on Independent Schools by the Saskatchewan Association of Independent Church Schools which is undated;
5. Summary of laws and regulations pertaining to independent schools in other provinces dated January 9, 1990.

A. The Legal Opinion of Professor McConnell

We have some strong reservations concerning the legal opinion rendered by Professor McConnell. Time and space do not permit us to present refutation on a point by point basis. However, our reservations can be summarized as follows:

1. Pitched as it is at a general philosophical level, the opinion does not provide clear guidelines on the real issues of substance before the Advisory Board;

2. The opinion often draws conclusions from authorities which those authorities cannot bear;

3. The opinion sometimes does not give an accurate, or full, account of the legal authorities used;

4. The conclusions reached in the opinion are so general that it is not clear which side of the debate Professor McConnell supports, although the general import of his opinion seems to suggest that he favours the position taken by the denominational schools for freedom from any regulation by the state;

5. Even at a philosophical level, Professor McConnell fails to give a fair hearing to competing philosophical and policy positions:

    a. Attempting to ensure minimum educational standards is not, *per se*, an interference with freedom of religion and conscience;

    b. There is no philosophical reason why the coercive power of the state should be any less insidious than the coercive power of parents;

    c. Locke's views, although entirely acceptable as regards freedom of religion, are outdated when they make a child the mere chattel and adjunct of the parent. International law, as well as state law, is moving towards recognizing the rights and autonomy of the child;

    d. The general trend in public education in Canada has been towards recognition of a multi-cultural society and freedom of choice. This trend does not undermine, and is not in conflict with, freedom of conscience and religion. Indeed, it is the cornerstone of freedom of conscience and religion. The right of denominational schools to teach a particular religion to the exclusion of all others is a right recognized by Canadian law. However, if religious tolerance and Canada's multi-cultural freedoms are to be preserved, this right must be recognized as an exception to the general trend and one which must be seen in its narrow historical context and not permitted to obliterate legitimate state concerns for the educational welfare of children;

    e. Pejorative terms such as "liberal" and "wishy washy", which we find throughout the denominational school literature, should be seen for what they are, ie. merely a disrespect for the tolerance which some people feel is essential in the teaching of religious matters. Liberalism and tolerance are not an absence of standards, moral or otherwise, they are an attempt to substitute broader moral standards for narrow dogma;

f. Educational standards, and the state's insistence upon the same, cannot undermine freedom of conscience and religion. They can only enhance them by making any choice informed and educated;

g. The state habitually interferes to secure the physical well-being of children (it did not in Locke's day), and it would be inconsistent and primitive not to ensure the intellectual well-being of the child. The autonomous well-being of the child is now a basic principle of family law in Canada, where it is held to be paramount over the interests of the parents. It would be inconsistent not to ensure the intellectual well-being of the child by the imposition of minimum standards throughout education.

6. Section 1 of *The Canadian Charter of Rights and Freedoms* makes all rights and freedoms subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". This is recognition, at the level of higher law, of the state's right to place limitations upon the rights and freedoms guaranteed by *The Charter*, including freedom of religion and freedom of conscience;

7. The state's refusal to insist upon minimum standards in education could be taken as an abdication of constitutional responsibility, and could lay the state and educational authorities open to legal process by adversely affected parties claiming that they have suffered as a result of not receiving adequate educational instruction.

B. The Provincial Power to Regulate Education

Section 93 of *The Constitution Act* confers on the provincial legislatures the exclusive power to make "laws in relation to education". This means that, subject to the limitations referred to below, the power to establish and administer schools and universities, as well as the power to regulate the content and form of education, and the competency qualifications of educators, and all matters necessarily incidental to education, is exclusively reserved to the provincial responsibility under the Canadian Constitution.

C. Limitations on Provincial Powers to Make Laws in Relation to Education

Apart from certain Federal exceptions such as schools operated on military bases under the authority of the Federal *National Defence Act*, or schools operated on Indians reserves under the authority of the Federal *Indian Act*, which are narrow and minor exceptions to the general rule, the Provincial power to make laws in relations to education is limited as follows:

1. Section 93 Restrictions

Section 93 of *The Constitution Act* restricts the provincial legislative authority to make laws in relation to education by the addition of four qualifying subsections. These subsections are referred to in Professor McConnell's opinion and provide as follows:

> i. Subsection 1 provides that "nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons has by law in the province at the union";
>
> ii. Subsection 2 provides that the dissentient schools for Protestants and Roman Catholics in Quebec are to be on the same footing as the separate schools for Roman Catholics in Ontario;
>
> iii. Subsection 3 gives to the "Protestant or Roman Catholic minority" in any province an appeal to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of the minority group in relation to education;
>
> iv. Subsection 4 gives the Federal Parliament the power to enact "remedial laws" to give effect to any decision of the Governor General in Council under section 93.

Section 93 applies to each of the original provinces of Confederation, namely, Ontario, Quebec, New Brunswick and Nova Scotia.

Slightly different versions of section 93 were negotiated upon the creation or admission of the remaining provinces, and these are to be found in the statutes which constitute those provinces. In the case of Saskatchewan, the applicable provision is section 17 of *The Saskatchewan Act* (1905):

> 17. Section 93 of *The British North America Act*, 1867 shall apply to the said province with the substitution for paragraph (1) of the said section 93 of the following paragraph:
>
> > 1. Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms in chapters 29 and 30 of Ordinances of the North-West Territories passed in the year 1901 or with respect to religious instruction in any public or separate school as provided for in the said Ordinances.
> >
> > 2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof or in substitution therefore there shall be no discrimination against schools of any class described in the said chapter 29.
> >
> > 3. Where the expression "by law" is employed in paragraph (3) of the said section 93 it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed in the said paragraph (3) it shall be held to mean the date at which this Act comes into force.

As Hogg points out in his *Constitutional Law of Canada* (2nd Edition), 1985 at page 824, section 93 and its provincial progeny are unusual in two respects:

> i. By qualifying provincial power to legislate in relation to education, section 93 amounts to a small bill of rights for the protection of minority religious groups;
>
> ii. By allowing a minority group to appeal to the Governor in Council (ie., the Federal Cabinet), and by authorizing the Federal Parliament to enact remedial laws to give effect to a decision on appeal, section 93 subordinates somewhat the provinces to the Federal Government in Parliament in the area of education.

However, it has been recognized that the Federal power to enact remedial laws, which is conferred by subsection 4 of section 93 has never actually been used.

Section 17 of *The Saskatchewan Act* (1905), incorporated into Saskatchewan Constitutional law a part, but only part, of section 93 of *The British North America Act*. It could be said that section 17 of *The Saskatchewan Act* supplemented that part of the BNA Act with some entirely new provisions applicable to Saskatchewan. The end result is that the protected rights of religious minorities with respect to education in Saskatchewan were spelled out with greater specificity than for some of the other provinces. For this reason, authorities based on legislation applicable to, say, Ontario or Manitoba should be read with careful attention to the differences in the statutory provisions.

Section 93(2) of the BNA Act clearly has no applicability to Saskatchewan and the subject matter of section 17(2) is not an issue before the Minister's Advisory Board. Nor are sections 93(3) and (4) (all of which deal with appeals to the Federal Cabinet and the jurisdiction of Parliament), matters for discussion in this opinion.

However, special attention should be paid to the important dissimilarities between section 17(1) of *The Saskatchewan Act* and 93(1) of the BNA Act. The two provisions differ most markedly in the extreme generality of section 93(1) and the extreme specificity of section 17(1). One reason for the specificity has been suggested by Sir Charles Fitzpatrick, CJ of the Supreme Court of Canada when, in the *Gratton* case, (1950) 50 S.C.R. 589, he wrote at page 596:

> When this section 17 was under consideration in Parliament it was deemed necessary, because of the bitter controversy to which it gave rise, to fully explain the meaning of the language used and the part which it was intended it should play in the general economy of the constitution then being provided for the new province.

He later wrote at page 597:

> To avoid the doubt and uncertainty which arose out of *The Manitoba Act* it was decided to adopt the section we are now considering, which limits the rights and privileges of the minority Protestant or Catholic, in any school district to those secured to it by chapters 29 and 30 of the Ordinance and excludes the rights and privileges guaranteed either by section 11 of *The North-West Territories Act*, 1875, or by any other legislation in force in the Territories with regard to any class of schools.

Sir Charles knew whereof he wrote since he was Minister of Justice when the Saskatchewan bill was being piloted through Parliament. He must have been aware, when the bill was being drafted, that section 93(1) in its original form would simply not have been acceptable at that time because of its apparent ambiguities and resistance to any explanation as to its meaning or the part it would play.

If we turn to chapters 29 and 30 of the Ordinances of the North-West Territories enacted in the year 1901, in order to discover which rights or privileges with respect to separate schools existed at the date of the passing if *The Saskatchewan Act* 1905, or with respect to religious instruction in any public or separate school as provided for in the said Ordinances, we find the following:

SEPARATE SCHOOLS

41. The minority of ratepayers in any district whether Protestant or Roman Catholic may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof. C.O., c. 75, s. 36.

42. The petition for the erection of a separate school district shall be signed by three resident ratepayers of the religious faith indicated in the name of the proposed district; and shall be in the form prescribed by the commissioner. C.O., c. 75, s. 37.

43. The persons qualified to vote for or against the erection of a separate school district shall be the ratepayers in the district as the same religious faith, Protestant or Roman Catholic, as the petitioners. C.O., c. 75, s. 38.

44. The notice calling a meeting of the ratepayers for the purpose of taking their votes on the petition for the erection of a separate school district shall be in the form prescribed by the commissioner and the proceedings subsequent to the posting of such notice shall be the same prescribed in the formation of public school districts. C.O., c. 75, s. 39.

45. After the establishment of a separate school district under the provisions of this Ordinance such separate school district and the board thereof shall possess and exercise all rights, powers, privileges and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

(2) Any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein. C.O., c. 75, s. 40.

RELIGIOUS INSTRUCTION

137. No religious instruction except as hereinafter provided shall be permitted in the school of any district from the opening of such school until one half hour previous to its closing in the afternoon after which time instruction permitted or desired by the board may be given.

(2) It shall however be permissable for the board of any district to direct that the school be opened by the recitation of the Lord's Prayer. C.O., c. 75, s. 110.

138. Any child shall have the privilege of leaving the school room at the time at which religious instruction is commenced as provided for in the next preceding section or of remaining without taking part in any religious instruction that may be given if the parents or guardians so desire. C.O., c. 75, s. 111.

139. No teacher, school trustee or inspector shall in any way attempt to deprive such child of any advantage that it might derive from the ordinary education given in such school and any such action on the part of any school trustee, inspector or teacher shall be held to be a disqualification for and voidance of the office held by him. C.O., c. 75, s. 112.

The significance of quoting these sections is to make the point that there is nothing in section 17 of *The Saskatchewan Act* (provincial equivalent of the small bill of rights for the protection of minority religious groups laid down in section 93 of *The Constitution Act*) which limits the provincial power to make laws respecting school curriculum standards and teaching competency, whether in the public school system or any denominational school system with the province.

The constitutionality of Saskatchewan education legislation has, with few exceptions, been upheld as being within the jurisdiction of the provincial legislature and not repugnant to section 17 of *The Saskatchewan Act* (1905).

It should also be made clear that the words "any class of persons" has been judicially determined to mean a class of persons "determined according to religious belief, and not according to race or language". See *Ottawa Separate School Trustees* v. *Markell* [1917] A.C. 62 at 69. In other words, the only protected rights under section 17, such as they are, are those possessed by the entire class of Roman Catholics or Protestants at the time that Saskatchewan entered Confederation. The exact scope of protected rights and privileges in each province can only be ascertained by examining the law regarding denominational or separate schools which was in force in that province when it joined Canada. Protected rights and privileges will therefore vary from province to province depending upon the state of its pre-Confederation law.

Another point to emphasize is that the laws condemned by section 17(1) of *The Saskatchewan Act* are limited to those which "prejudicially affect" the protected rights and freedoms. As a general proposition, it can be said that the courts have been reluctant to find a prejudicial affect even in the case of legislation which is not entirely benign towards denominational schools. See in this regard *Ottawa Separate School Trustee* v. *Quebec Bank* [1920] A.C. 230.

It is also clear that the protected rights and privileges of denominational schools have been held by the courts to be subject to a considerable degree of provincial regulation. For instance, in *Tiny Roman Catholic Separate School Trustees* v. *The King* [1920] A.C. 63, the Privy Council said that Ontario had the power to "regulate" instruction in separate schools. On this basis, the Privy Council upheld the provincial law which prohibited separate schools in Ontario from offering secondary (or high school) education beyond grade 10, although there was no such restriction on the separate schools at the time of Confederation. This provision had a severely detrimental effect on the separate school system, yet it was upheld as legitimate "regulation".

The upshot of the relevant judicial interpretations of minority rights recognized under section 93(1) of the BNA Act and its provincial counterparts is that the courts are willing to countenance considerable regulation by provincial authorities in provincial separate school systems.

As regards the general intent of section 93(1) of the BNA Act, the rights and powers exercisable by the trustees of separate and common schools at the time of Confederation, Lord Haldane, on page 75 of the Privy Council decision in *Tiny* concluded as follows:

> Did the trustees of the separate Roman Catholic schools secure at Confederation a right to maintain, free from control or regulation by the legislature of Ontario, as respects the scope of instruction, denominational schools which could embrace the subjects formerly taught in the separate schools on their higher sides, and afterwards taught in undenominational high schools, collegiate institutes and continuation schools, as developed after Confederation, or analogous subjects taught in the Roman Catholic separate schools before Confederation, and to exempt from taxation for the support of such undenominational educative organizations? And did the trustees secure a title to receive a share of every grant by the legislature for common school purposes, construed as extending to the maintenance of education of the type given in post-Confederation secondary schools, as well as in those that were merely elementary, based on the number of pupils attending the separate schools, and independent of the subjects taught, or the text-books used, every separate school being entitled to its share, calculated according to a statutory rate, however advanced, however rudimentary, the education and books might be? If these questions are answered in the affirmative then it was ultra vires of Ontario to take away the right either to regulate the schools in a manner inconsistent with this freedom, or to diminish the grants or to tax for the support of the undenominational schools, by legislation, or administratively, so far as control was concerned, by State regulation.

Commencing on page 376, Lord Haldane traces the history of the legislation governing public and separate schools up to 1867. He looks assiduously for some authority giving separate (or common) schools specific legal rights to offer high school instruction. He was unable to find any such authority. So he approached it from the other end to see if the province had jurisdiction with respect thereto. On page 385 he writes as follows:

> The Provincial Legislature is supreme in matters of education, excepting so far as s. 93 of *The British North America Act* restricts its authority. Subs. 1 preserves as they stood any rights and the privileges given in relation to denominational schools by law in 1867. The question, therefore, is whether the Province could then as the law stood so control the courses of study and the general range and quality of the text-books used, as to enable the educational authorities of the Province to prescribe the gradation of the separate school and the stages in which instruction should be given in it.

And on page 387 he concludes as follows:

> It is the principle and purpose which appear to their Lordships to be dominant through the Statutes, and the language used in the sections just quoted has brought this Committee to the conclusion that the power of regulation must be interpreted in a wider sense that given it in the judgment of the Chief Justice of Canada. They are not at one with him in thinking that

separate school trustees could give secondary education in their schools otherwise than by the permission, expressed or implied, of the Council of Public Instruction.

In this regard, the general admonitions and warnings in Professor McConnell's opinion to the effect that section 93 creates a "more imperative constitutional norm from which, at least in its central aspects, there can be no detraction whatsoever" and his failure to deal with the details of section 17 of *The Saskatchewan Act* (1905) in the relevant case law are quite misleading if they are intended to suggest a vestigial right reserved to separate denominational schools within the province to remain free of all state regulation. There seems to be some suggestion in his opinion, at least, that the constitutional guarantees afforded to separate schools found in section 93 of *The Constitution Act* somehow support the denominational school case in this matter. In fact, the contrary is true and any suggestion of complete autonomy and freedom from regulation should be scotched. The rights of denominational schools recognized at the time Saskatchewan entered Confederation are preserved, but these rights are extremely narrow, and do not abrogate in a significant way the provincial power over the regulation of education.

2. Charter Considerations

Although Professor McConnell mentions the accepted position that *The Canadian Charter of Rights and Freedoms* constitutes a higher law against which other Federal and Provincial laws must now be judged, and although he cites several sections of *The Charter* which might have application in the case of denominational schools, he carefully refrains from any detailed argument as to how the Provincial power to regulate education could infringe upon Charter rights and freedoms where that power is used to impose minimum educational and competency standards. He also refrains from discussing the implications of section 1 of *The Charter* which makes all rights and freedoms set out in *The Charter* subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

For instance, if we take what Professor McConnell regards as fundamental, the guarantee of "freedom of conscience and religion" contained in 2(a) of *The Charter*, we think that what is required here is some discussion and guidance as to how this right is affected by allowing the Province to set and impose basic standards for curriculum content and teacher competency which could apply throughout all schools.

The right to freedom of conscience and religion as guaranteed by *The Charter* is obviously not an absolute right, otherwise, as Hogg has pointed out, it would "protect some minority religious groups in such practices as human sacrifice or polygamy, as well as refusals of schooling or medical treatment of children" (p. 711). Hogg's conclusion is that tolerance demands that where "there is no compelling governmental interest to the contrary, section 2(a) of *The Charter* should require the law to accommodate minority religions by according exemptions for their practices".

Hence, the Advisory Board's attention should be directed to the issue of whether there is a compelling governmental interest in ensuring that children educated within the Province receive a basic curriculum from qualified teachers.

However, before this matter is even addressed, the simple question has to be asked as to how the Government's insistence upon a minimum curriculum requirement or a competency requirement for teachers even prescribes freedoms of conscience and religion in any way. A good argument can be advanced that it does not. The case law suggests that freedom of conscience and religion are threatened when educational authorities insist upon the teaching of one religion to the exclusion of all others. Standards of teaching competence and minimum curriculum requirements do not, per se, conflict with freedom of conscience and religion.

What Canadian case law we have on this issue strongly asserts that there is a compelling governmental interest in the education of the young and that it is not a violation of religious freedoms for a government to ensure that minimum standards are maintained.

Professor McConnell's discussion of the *Jones* case does not convey correctly the significance of meaning of that case on this issue. The *Jones* case is the leading Charter decision on compulsory attendance at a state authorized school. In it, the Supreme Court of Canada affirmed that the State, represented by a province, has an overriding interest in the education of school-age children and can require them to attend schools that provide an effective program. The State, however, cannot require attendance at a public school, but must allow parents to choose from alternative forms of effective schooling that reflect the parents' religious beliefs.

It is interesting that the Supreme Court saw fit to mention that the enforcement of the state's interest in educating the young may well limit to some extent the parents' religious freedoms to educate their children as they see fit. Nevertheless, the Court said that, provided such limits were reasonable and applied in accordance with fundamental justice, those limits would not offend *The Charter*.

Another interesting feature of the Supreme Court's majority conclusion in the *Jones* case is that a requirement for a person who provides schooling at home or elsewhere to take steps to have that instruction certified as being effective is a limitation on religious freedoms which can be demonstrably justified in a free and democratic society. In other words, the significance of the *Jones* case is an assertion of the state's rights to impose educational standards which may, to some extent, conflict with the religious freedom of parents.

Contrary to Professor McConnell's statement on page 31 of his opinion, four out of the seven judges in the *Jones* case found that the requirement in the Alberta legislation directing Pastor Jones to apply for a certificate of efficient instruction did not offend Pastor Jones' freedom of religion. It is not a violation of an individual's religious freedoms for the state to insist upon and supervise minimum standards. The majority of the Court pointed out that the Alberta *School Act* accommodates religious freedom because it envisages the education of pupils at public schools, private schools, at home, or elsewhere. The legislation permits the existence of schools which have a religious orientation and is a flexible piece of legislation which seeks to ensure that all children receive an adequate education. It does not offend freedom of religion by requiring those with a religious orientation to recognize a secular role for school authorities. In other words, the majority of the Court felt that there was no inherent incompatibility between religious instruction and efficient instruction in secular subjects:

> In my view, *The School Act* does not offend religious freedom; it accommodates it. It envisages the education of pupils at public schools, private schools, at home or elsewhere. The legislation permits the existence of schools such as the appellant's which have a religious orientation. It is a flexible piece of legislation which seeks to ensure one thing - that all children receive an adequate education. The appellant agrees with the need for an adequate education and that this includes instruction in subjects such as English, mathematics, social studies and science. Indeed, at trial, he called a secular expert to prove that such instruction was being provided in his school. There is no conflict between what the legislation requires and what the appellant feels it is his duty to provide. True, he wishes to provide more, specifically religious guidance, but the legislation does not prohibit that. Nevertheless, the appellant states that the school board policy of requiring an individual to make an application violates his s. 2(a) right. In other words, while the content of the legislation does not interfere with his religious freedom, the required act of conformity with it does.
>
> I believe that the appellant must fail on this ground of appeal. It does not, in my view, offend the appellant's freedom of religion that he is required under the statute to recognize a secular role for the school authorities. And that is what it is. It would be strange indeed if, just because a school had a religious approach to education, it was free from inspection by those whose responsibility it was to ensure that the standards of secular education set by the province were being met. This, however, is not really the appellant's position. He acknowledges the board's interest; he simply states that to apply to it for an exemption offends his s. 2(a) right. I think he has failed to establish this. There are many institutions in our society which have both a civil and a religious aspect, e.g. marriage. A person's belief in the religious aspect does not free him of his obligation to comply with the civil aspect. No one is asking the appellant to replace God with the school board as the source of his right and his duty to educate his children. They are merely asking him to have the quality of his instruction approved by the secular authorities so that minimum standards may be maintained in all educational establishments in the province.
>
> In support of his submission that his s. 2(a) right is being violated the appellant argues that the true purpose of the impugned legislation is to give the school board absolute control over the education of children. This is clearly without merit. The legislation itself contemplates exemptions for the very thing the appellant is doing. The purpose of the legislation, in my view, is to ensure that children receive an adequate education, a purpose with which I believe the appellant is in full agreement. There is surely no inherent incompatibility between religious instruction and efficient instruction in secular subjects.

Even the minority of the Court, who felt that regulatory activity by the state might interfere with religious convictions, nevertheless asserted that the state has an important interest in the education of its citizens and it may, in advancing its compelling interests in the education of the young, place reasonable limits on the freedom of those who believe that they should themselves attend to the education of their children and do so in conformity with their religious convictions. This means that a requirement that a person who gives instruction at home or elsewhere to have that instruction certified as being efficient is demonstrably justified in a free and democratic society within the meaning of section 1 of *The Charter*. The minority also felt that a subsidiary requirement that those who wish to give certification that such instruction complies with provincial standards of efficiency was also a reasonable limit. Such a requirement, the majority felt, constitutes a minimal or peripheral intrusion on religion and to permit anyone to ignore it on the basis of religious conviction would create an unwarranted burden on the operation of the legitimate legislative scheme to assure a reasonable standard of education.

The true significance of the *Jones* case is that the Supreme Court of Canada has overwhelmingly confirmed that the state has an interest in ensuring that the minimum standards of education are being met and that the provincial government may set those standards and institute procedures for enforcing them, provided it does not do so in an arbitrary or unreasonable way. In short, what case law we have supports the position for the provincial regulation of curriculum standards and teacher competency.

3. Provincial Bill of Rights

Professor McConnell makes much of the *Wiebe* case and concludes as follows:

> The *Wiebe* case, while not technically binding, would be highly persuasive here in Saskatchewan, since the "freedom of religion" is the same and the statutory basis of educational systems is similar in the two provinces. Freedom of religion is essentially inseverable.

This conclusion ignores the warning of Mr. Justice Oliver who rendered the decision in the *Wiebe* case:

> I should like to make it clear now that whatever ruling I make in this case will be restricted to the particular facts of the case. The only legislation I have to consider is Alberta legislation; the only charge I have to consider is the one before me; and the only religion I have to consider is that practised by the accused as a member of the Church of God in Christ (Mennonite): "A Clean Slate".

It is true that the Alberta judge held that the Alberta *School Act*, "insofar as it relates to school attendance and creates exceptions that in some cases involve a consideration of the *Department of Education Act*", was rendered inoperative because it denied Elmer Wiebe freedom of religion guaranteed by section 2 of *The Alberta Bill of Rights*. However, there were certain facts peculiar to the *Wiebe* situation which caused the judge to issue the warning cited above to the effect that he was not intending to lay down broad principles that could be exported to other provinces.

In the *Wiebe* decision, the judge went out of his way to make it clear that he was dealing with an extraordinary situation peculiar to the province of Alberta in which satisfactory safeguards were not available. There is nothing in the case which refers generally to the provincial power to regulate educational standards and teacher competency or which suggests that the state does not have a legitimate and compelling interest in doing so.

It should also be borne in mind that the *Wiebe* decision was a provincial court decision in Alberta decided long before the Supreme Court of Canada, in the *Jones* case, addressed the issues fully and provided guideline from a broader perspective applicable throughout all of the provinces.

4. International Declarations

We know of no international treaty or declaration to which Canada has acceded which says that the state does not have a legitimate interest in the education of children and in ensuring that minimum standards are met both as regards curriculum content and teacher competency.

Indeed, we need go no further that the international declarations cited by Professor McConnell for recognition of such interests at the international level. *The International Covenant on Civil and Political Rights* specifically says that the parental choice over education is subject to "such minimum educational standards as may be laid down or approved by the state . . . "

In one important aspect we take issue with Professor McConnell's conclusions. It is our feeling that at an international level the relevant treaties and declarations display a strong preference for the autonomy of the child and the separation of the children's rights from those of the parent. Indeed, we think that the whole international trend is away from seeing the child as a mere adjunct of the parent. In this respect we think it is wrong of Professor McConnell to conclude that international trends constitute an important affirmation of the rights of parents to provide their children with a suitable religious education if he means by this that parental rights enjoy an ascendancy over the rights of the children or over the state's right to ensure and regulate educational standards for children.

D. Standing Appeal Board

With respect to the proposal by the Saskatchewan Association of Independent Church Schools for the establishment of a standing appeal board, it is our view that this concept is fundamentally flawed. In our view the inherent conceptual flaws exist regardless as to whether the entity is referred to as a "standing appeal board" or a "tribunal" akin to the board of reference concept established by *The Education Act*.

The rationale in support of the standing appeal board proposal appears to be in part that "due process in regulation of independent schools by the Minister, or by officials responsible to the Minister, requires an appeal process". In advancing this argument there are six proposed areas which would be "appealable" to the appeal board. The existing proposal for an appeal board is a general conceptual proposal lacking in specifics and it is therefore difficult to address this proposal beyond the conceptual level. However, even at the conceptual level we believe the proposal is flawed and would make the following comments:

1. Under the present constitutional framework each provincial legislature has exclusive authority to make laws in relation to education. Out of necessity there is obviously some delegation and subdelegation of authority both to the ministerial level and to the departmental level. In our view the fundamental problem with the proposed standing appeal board structure is that it would constitute an improper usurpation or abdication of authority at the ministerial level. If ministerial authority with respect to independent schools is usurped by the authority of the standing appeal board, then the standing appeal board effectively becomes the decision making body of final resort in place of the minister.

2. Again, the proposal is lacking in specifics as to the contemplated authority and jurisdiction of the standing appeal board, however, when one examines the six proposed areas which would be appealable, it is clear that these six areas include areas of policy. Clearly, the "goals of education" is a policy matter. Once decision making authority on matters of policy are abdicated to an independent body, we have in our view a situation of improper delegation of authority.

3. The existing proposal contemplates that "certain decisions of the appeal board would be appealable to the courts". Although this statement is not specific, it appears to contemplate that the decisions of the appeal board would be to some extent insulated from attack or review through the courts. To the extent that such decisions are not subject to review by the courts, the appeal board would again appear to become a decision making body of final resort over and above the ministerial level insulated from judicial review. To this extent the structure would constitute an abdication of ministerial authority.

4. The stated objective of the appeal board is to ensure "due process" and to act as a "safeguard". If the true mandate and objective of the appeal board is to ensure administrative fairness and due process rather than to make decisions, in our view the judicial system is better equipped to achieve this objective. There is a fundamental distinction between the concept of ensuring due process and the power to make final decisions. If it is contemplated that the proposed appeal board would have the authority to make or reverse ministerial decisions than it effectively becomes a decision making body and has gone far beyond the concept of merely ensuring procedural fairness. In our view the existing state of the law and judicial system are adequate to ensure due process.

5. In our view the analogy between the department's supervisory official and a director of education is not valid. The argument appears to be that directors' decisions are "appealable" to the division school boards whereas a department official is accountable only to the minister. In fact a division school board is a creature of statute and its authority is prescribed by *The Education Act*. The director of education is pursuant to section 107 of *The Education Act* the chief executive officer of the division board. It is the division school board which has statutory authority to make decisions within its prescribed statutory mandate. The six areas of proposed jurisdiction for the appeal board are for the most part not areas of jurisdiction for either a director of education or a division school board. The granting of final decision making ability with respect to these six areas constitutes a fundamental restructuring of the entire existing educational system. If final decision making ability on these six areas is to be removed to a standing appeal board for independent schools, it may be argued that it should be removed for public and separate schools as well.

6. In addition to the fundamental conceptual flaws, in our view there exist more specific potential problems with the proposal. For example, it would not in our view be appropriate for a minister to appoint a chairperson of a standing appeal board which then sits in judgment of ministerial decisions. Unless a more specific proposal is presented it is difficult to assess the proposal in greater detail.

E. Conclusions

1. Professor McConnell's opinion does not provide guidance or elaboration on the state's legitimate and recognized right to regulate educational standards and teacher competency.

2. Separate schools with a religious bias are recognized and guaranteed under the Canadian Constitution but their rights are prescribed by the overriding interest of the state in ensuring that minimum educational standards are maintained.

3. Canadian jurisprudence, in the *Jones* case, has strongly endorsed the interests of the state in ensuring that minimum standards of education are being met and that the government may set those standards and impose procedures for enforcing them, provided the same are done in a way that is not arbitrary or unreasonable.

4. There is no Canadian jurisprudence which suggests that the state's insistence on minimum standards of curriculum content and teacher competency is an unreasonable restraint on freedom of religion and is not justified in a free and democratic society.

5. Section 1 of *The Canadian Charter of Rights and Freedoms* provides higher law authority for the state's right to impose such reasonable limits on freedoms of conscience and religion as can be demonstrably justified in a free and democratic society.

6. The trend in the case law and in international law is away from giving parents *carte blanche* in the education of their children.

7. The standing appeal board structure contemplated by the Saskatchewan Association of Independent Church Schools is fundamentally flawed.

If we can provide any further elaboration or assistance to you in this matter, please do not hesitate to contact the writers.

Yours truly,

Gauley & Co.

Per:

Rex M. Beaton
Jim Russell

Appendix 12

United Nations Draft Convention on the Rights of the Child

E/CN.4/1989/29

16 February 1989

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) make primary education compulsory and available free to all;

   (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) make educational and vocational information and guidance available and accessible to all children;

   (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) the development of the child's personality, talents, and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in *The Charter of the United Nations*;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for the civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace. tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment.

2. No part of this article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Appendix 13

Annotated List of Christian Curricula Used in Saskatchewan's Independent Schools and Home-Schooling

A Beka Book

Address: Pensacola Christian College
Box 18000
Pensacola, Florida 32523-9160

A Beka Book Publications produces a full range of textbooks, designed for a conventional classroom setting, for all academic subjects from pre-school to Grade 12, including Bible, social studies, science, health, mathematics, reading, language arts (1-6), English (7-12), Spanish, and fine arts, as well as school supplies, curriculum kits, and curriculum guides. For small school and home-schooling situations, they also have both a Christian Correspondence School and Video Home School (i.e. their complete curriculum is available on video).

Although some independent schools in other provinces are using A Beka more or less exclusively, no independent school in Saskatchewan is using A Beka exclusively. However, some schools (in particular the Mennonite schools) are using some A Beka textbooks, and about fifty home-schooling families are using A Beka more or less exclusively.

Accelerated Christian Education (ACE)

Address: P.O. Box 1438
2600 ACE Lane
Lewisville, Texas 75067-1438

Canadian Distributor: ACE Canada, School Supplies
P.O. Box 1360
Portage La Prairie, Manitoba R1N 3N9

Western Canadian Co-ordinator: Bob Carson
19 - 6245 Sheridan Road
Richmond, B.C. V7E 4W6

Accelerated Christian Education produces a complete curriculum for all academic subjects from pre-school to Grade 12, including learning to read, Mathematics, English, social studies, science, word building, and Bible reading, as well as electives, such as accounting, art, computer literacy, French, Greek, New Testament Church History, New Testament Survey, Old Testament Survey, and Spanish. This utilizes a self-paced competency-based pedagogy, designed for individualized learning situations in school or in the home. Some of the academic curriculum (1-12) is now available on floppy disk and audio-cassette for use on audio-interactive computers. ACE also sells various school supplies for use with its curriculum.

Accelerated Christian Education, which is used by all SAICS schools and about 150 home-schooling families, is the most widely used Christian curriculum in Saskatchewan's independent schools and home-schooling. ACE provides institutional support for schools using their curriculum in the form of teacher in-service, teachers' conventions, administrators' conferences, school visits, and a student convention program. Image Extension School in Prince Albert, which supplies curricula to home-schooling families, is the only such supplier that is physically located in Saskatchewan.

Alpha Omega Publications

Address: P.O. Box 3153
Tempe, Arizona 85281

Canadian Distributor: Academic Distribution Services Inc.
528 Carnarvon Street
New Westminster, B.C. V3L 1C4

Alpha Omega is a Christian curriculum which uses a flexible, integrated workbook/textbook format. Their LIFEPAC curriculum was designed with home schools in mind, but it can also be used in both individualized and conventional school settings. Alpha Omega supplies a preschool curriculum, a kindergarten curriculum with a strong emphasis on learning to read (using phonics) and an academic curriculum for grades 1 to 12 covering five major areas: Bible, language arts, mathematics, science, and social studies. They also supply secondary-level electives in home economics, consumer mathematics, Spanish, art, and Greek.

About 75 home-schooling families are using the Alpha Omega curriculum in Saskatchewan. Some independent schools in other provinces are using Alpha Omega, but none in Saskatchewan (of which the Department of Education is aware).

Advanced Training Institute of America (ATIA)

Address: Box 1
Oak Brook, Illinois 60522-3001

ATIA features a project approach to home-schooling. Bible-based, the ATIA curriculum includes both "Wisdom Booklets" through which Scripture is studied extensively, and unit studies, such as "Seeing and Sight", through which several academic disciplines are typically taught -- in this example, linguistics, history, science, law, and medicine. As many as ten families in Saskatchewan are using ATIA materials.

Association of Christian Schools International (ACSI)

Address: P.O. Box 4097
Whittier, California 90607

Canadian Distributor: Scripture Press Publications, Ltd.
104 Consumers Drive
Whitby, Ontario L1N 5T3

Western Canadian Regional Director: Neil Steinke
Prairie Bible College
P.O. Box 988
Three Hills, Alberta T0M 2A0

ACSI is more of a school support group than a publisher of educational materials. As such, it is the largest association of evangelical Christian schools in North America. Three Saskatchewan schools (Caronport High School, Heritage Christian School in North Battleford, and Valley Christian Academy in Osler) are affiliated with ACSI. As a support group, it provides accreditation services for schools, teachers, and administrators; sponsors teachers' conventions and administrators' conferences; provides profesional counsel and legal defense; negotiates group insurance plans; and publishes a newsletter, "Christian School Comment".

ACSI does not publish a complete K-12 curriculum, but it does publish a complete Character Foundation Curriculum (K-8); some social studies and literature textbooks; a Bible truth series for language arts, science and mathematics, social studies, and fine arts and health; and various reference books for parents, board members, administrators, and teachers involved in Christian schools.

Bob Jones University Press

Address: Greenville, South Carolina 29614

Bob Jones University publishes a complete range of academic textbooks that are used primarily by member schools of the American Association of Christian Schools, which is the largest association of fundamentalist Christian schools in the United States. Their offerings include kindergarten materials, English skills (elementary), writing and grammer (secondary), vocabulary (secondary), literature (secondary), music, heritage studies (1-12), mathematics (K-12), science (1-12), speech (secondary), and computer (secondary). They also provide materials specifically designed for home schools.

No independent schools in Saskatchewan (of which the Department of Education is aware) are presently using Bob Jones materials, but some home-schoolers are.

Calvert School

Address: Tuscany Road
Baltimore, Maryland 21210

The Calvert School, founded in 1897, provides the closest thing to a classical home education program -- a structured, textbook-oriented program emphasizing history, geography, poetry, foreign languages, etc. -- suitable for families with an intellectual bent. It is a secular program, Kindergarten to Grade 8, with a non-sectarian Christian flavour. Accredited with the Maryland State Department of Education, it is therefore recognized by most other state departments of education as well.

A few families in Saskatchewan have enrolled their children in the Calvert program, but the Department of Education does not know how many.

Christian Liberty Academy of Satellite Schools (CLASS)

Address: 502 W. Euclid Ave.
Arlington Heights, Illinois 60004

CLASS is a home school support group and consulting service. Rather than publishing their own materials, they review and select academic materials from twenty-five different publishers, selecting what they judge to be the highest quality materials for each grade level for use in a home school environment. In addition, they provide extensive reference materials for parents in starting and operating a home school. They are closely affiliated with the Home School Legal Defense Association, which is the largest association of Christian attorneys in the United States that specializes in defending home schooling families in the courts.

About 20 home schooling families in Saskatchewan are using CLASS.

Christian Light Education

Address: 1066 Chicago Ave.
P.O. Box 1126
Harrisonburg, Virginia 22801-1126

Christian Light is a Mennonite publishing house that provides a workbook/textbook approach, designed primarily for home-schooling, based upon their own revision of Alpha Omega worktexts, supplemented by some of their own textbooks and resource books. While the English and science curricula, for example, are very similar to Alpha Omega, the social studies curriculum reflects conservative Mennonite values and concerns.

Christian Light materials are used in some of Saskatchewan's Mennonite schools, as well as about 20 home-schooling families in the province.

Christian Schools International (CSI)

Address: 50 East Paris Ave. SE
P.O. Box 8709
Grand Rapids, Michigan 49508

District 11 Association (encompassing Manitoba, Saskatchewan, Alberta, and Montana)
Curriculum Office: Ary De Moor
Curriculum Co-ordinator K-12
10766 - 97th Street
Edmonton, Alberta T5H 2M1

Christian Schools International is a network of Christian schools in the United States, Canada, Australia, and New Zealand that are affiliated with the Christian Reformed Church. Two Saskatchewan schools (Regina Christian School and Saskatoon Christian School) are members of CSI. CSI publishes reference materials for school administrators, a Bible series (preschool to grade 8), and textbooks (not all grade levels) in language arts, science, physical education, sexuality, and fine arts.

The District 11 Curriculum Office provides advice to member schools with respect to curriculum, co-ordinates the development of new curricula (in conjunction with schools and teachers) for use in member schools, and sponsors teachers' conventions for teachers in member schools. A major recent effort has resulted in the development and publication of a family life education curriculum for Christian schools (K-12).

Concerned Communications

Address: Highway 59 North
Siloam Spring, Arkansas 72761

The Seventh-day Adventist schools in Saskatchewan utilize two series produced by Concerned Communications: "A Reason for Writing" for teaching writing (K-6); and "Bodywise", a series of workbooks (grades 4-8) that assist the teaching of health from a Christian point of view.

Moore Canada Child Development Centre

Address: P.O. Box 500
Lillooet, B.C. V0K 1V0

Raymond and Dorothy Moore and their associates at the Hewitt Research Foundation in Washougal, Washington, have, with no close seconds, conducted more academic research on home-schooling that anyone else. Consequently, the Hewitt-Moore Child Develpment Center, also in Washougal, Washington, and its Canadian counterpart are significant suppliers of educational materials to home-schooling families in the United States and Canada (about 45 families in Saskatchewan).

While reference is freqently made to the "Hewitt Moore curriculum", Hewitt-Moore is more of a support group and consulting service for home-schooling families. Rather than publishing their own materials, they review and select academic materials from a number of different publishers, both Christian and secular, selecting what they judge to be the highest quality materials for each grade level for use in a home school environment. They attempt to tailor their recommendations and supply materials to parents in the light of the parents' philosophy and the children's ability and progress. While they are a secular organization, they supply both Christian and secular materials because the preponderance of their clientele are Christians.

Pacific Press Publishing Association

Address: P.O. Box 7000
Boise, Idaho 83707-1000

Prairie Distributor: Adventist Book Centre
2015 39th Ave. N.E.
Calgary, Alberta T2E 6R7

Pacific Press is a denominational publishing house that publishes a Bible series (K-12) and a science health series (K-8) which are used in Adventist schools in Saskatchewan. The materials are specifically designed so that they can be used in multi-grade classrooms.

Review and Herald

Address: 55 West Oakridge Drive
Hagerstown, Maryland 21740

Prairie Distributor: Adventist Book Centre
2015 9th Ave. N.E.
Calgary, Alberta T2E 6R7

Review and Herald is a denominational publishing house that publishes a reading series (grades 1-9) which are used in Adventist schools in Saskatchewan.

Rod and Staff Publishers, Inc.

Address: Crockett, Kentucky 41413

Rod and Staff is a denominational publishing house affiliated with the Mennonite Conservative Fellowship. They publish a complete curriculum (K-10), covering all basic subjects plus some electives primarily for use in member schools of the Mennonite Conservative Fellowship, of which there is one in Saskatchewan (Plains Christian Day School in Osler). Some of these materials are also used in other Mennonite schools in Saskatchewan.

Appendix 14

Characteristics of Independent Schools

Extracts or Summaries of Four Relevant Studies

Introductory Comment

The Dirks (1987) and Ens (1985) studies are Saskatchewan and Saskatoon studies, respectively, while the Erickson (1979) and Coleman (1981) studies are British Columbia and American studies, respectively. The Erickson and Coleman studies are extremely comprehensive studies, probably the two most comprehensive that have ever been done in North America. Nonetheless, in generalizing from the Erickson and Coleman studies, one should remember that these are studies of independent schools in which (1) the schools received no direct funding from the government; (2) in both cases, roughly two-thirds of the students interviewed were enrolled in Catholic schools; (3) the regulation of B.C. schools was minimal, whereas the regulation of American schools was variable across the various American states. Parental affiliation with independent schools was therefore exacting (i.e. expensive in terms of time and money) and voluntary. On the other hand, independent schools had the liberty to limit access in some fashion and to utilize unorthodox personnel policies.

Summary of Characteristics as Revealed by the Four Studies

1. The preponderance of independent schools are religiously based. The parents and children tend to be associated with the denomination, church, or society that operates the school. Parents choose independent schools specifically because such schools offer integrated religious/academic programs of studies that more closely reflect the parents' philosophy of life and world view.

2. Children attending individual independent schools come from socio-economic and racial backgrounds that are generally as disparate and heterogenous as children attending individual public schools. In particular, the Coleman study found out that while independent Catholic schools as a group drew fewer blacks than public schools, there was less internal segregation in both racial and economic terms within the Catholic schools as a group compared to the public schools as a group.

3. In the Erickson study, parents from independent and public schools did not differ significantly with respect to income. In the Coleman study, parents of independent school students had, on average, slightly higher incomes than parents of public school students.

4. In the Erickson study, independent school *parents* generally had higher educational aspirirations for their children. In the Coleman study, independent school *students* had higher aspirations with respect to post-secondary studies.

5. Independent schools tend to be more academically oriented. They tend not to offer as wide a range of courses as public schools, particularly with respect to vocational and other non-traditional programs.

6. Independent schools tend to be smaller. As such, the range of extra-curricular sports activities tends to be narrower in independent schools, but the rate of per pupil participation tends to be higher.

7. As community-oriented schools defined on the basis of religion or philosophy rather than geography, independent schools function differently from public schools. If professionalism is the essential ingredient in the working of public schools, what Erickson calls *Gemeinschaft* is the essential ingredient in independent schools. This does not mean that there is no sense of community in public schools or no professionalism in independent schools, but that the emphasis is different.

8. Public school facilities are generally superior to those of independent schools.

9. Independent schools generally provide a safer, more disciplined, and more ordered environment for learning.

10. Independent school students generally demonstrate somewhat better cognitive outcomes, but to what extent this is due to the school or to the home is not conclusive.

11. The Dirks study reports that independent schools do a commendable job of instilling traditional values of hard work, honesty, respect, decency, and obedience in their students, but this is more of a presumption than a hard fact. This is an important reason why parents often enrol their children in independent schools; one presumes that they would not continue to pay tuition fees if they did not personally observe such outcomes. The Coleman study reported that students in non-Catholic independent schools showed *slightly higher* levels of self-esteem and higher gains from the sophomore to senior levels than students in public or Catholic schools.

12. The Erickson study concluded that independent school students demonstrated less prejudiced attitudes towards minority groups. The Coleman study concluded that student aspirations in independent Catholic schools were less class-based.

13. Public schools would appear to have proportionately more students that are physically handicapped, particularly students who are severely handicapped, since independent schools are less equipped to handle such students. However, independent schools would appear to have their share of learning disabled students, particularly since learning disabilities are often a reason why parents enrol their children in independent schools.

Concluding Comment

Erickson provides the following charicature of independent schools in British Columbia, which is not a bad one-paragraph summary of the above characteristics of independent schools.

> In the spring of 1978, when the baseline survey was conducted, many private schools were housed in rather antiquated buildings. Many were staffed by teachers paid about $10,000 less than their public school confreres, and many were short of many material benefits, especially dollars. The future of the schools was in jeopardy. Our data show that the jeopardy was sensed by parents, teachers, and students. There was no indication that anyone loved the jeopardy per se. No one lauded leaking roofs, inadequate wiring, dog-eared books, meager wages, and a constant struggle to pay spiraling bills. With surprising consistency, however, parents, teachers, and students expressed affection for what they experienced within the context of the leaking roofs and meager wages. According to the reports of all three groups, the somewhat impoverished private schools were distinguished from the well-heeled public schools by superior commitment, consensus, community, accomplishment, and exceptionality.[1]

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[1] Donald A. Erickson, "Should All the Nation's Schools Compete for Clients and Support?" *Phi Delta Kappa* (September 1979), p. 14.

Gordon E. Dirks. *A Review of Private Schooling in Saskatchewan.* Submitted to the Honourable Lorne Hepworth, Minister of Education, September 1987.

Extracts[2]

1.3 The Review Process

In order to respond to the preceding terms of reference the following research activities were undertaken by the writer:

1. Consultations were held with:
   - representatives from the Saskatchewan Department of Education;
   - representatives from the Saskatchewan Teachers' Federation;
   - representatives from the League of Educational Administrators, Directors and Superintendents;
   - representatives from the Saskatchewan School Trustees' Association;
   - representatives from the Saskatchewan-Manitoba Conference of the Seventh-day Adventist Church;
   - representatives from the University of Regina and the University of Saskatchewan Faculties of Education;
   - representatives from the Saskatchewan Association of Independent Church Schools;
   - representatives from the nine publicly-funded private high schools.
2. On-site school visits were conducted at fourteen private schools, as well as the Bergthaler Associated School in the Valley School Division.
3. Directors of Education representing forty-seven school divisions responded to a request to provide written information pertaining to the operation of private schooling in their jurisdictions, as well as make personal observations and recommendations pertaining to the subject matter of this review.

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[2] This report was commissioned by the Minister of Education on March 13, 1987. See Volume I, pp. 23-24, for the context of this report, and Volume II, Appendix 2, for the news release announcing that the Minister was commissioning this study. The following extracts are taken from pp. 7-8, 19-21, and 38-41.

4. School principals representing thirty-one private schools responded to a request to provide written information pertaining to the operation of their independent school, as well as make personal observations and recommendations pertaining to the subject matter of this review.

5. Provincial and territorial jurisdictions in Canada were requested to provide information pertaining to private schooling in their jurisdiction.

6. Saskatchewan Department of Urban Affairs officials were requested to provide information pertaining to municipal taxation of property used for private schooling purposes.

7. Saskatchewan Department of Education officials were requested to provide relevant Department of Education material pertaining to private schooling in Saskatchewan.

8. Various reports, articles, briefs and other literature pertaining to the subject matter of this review were consulted.

In the view of this writer this action plan has been sufficient to enable a well-informed response to the terms of reference and this response is contained in the following chapters.[3]

3. An Overview of Private Schooling in Saskatchewan

3.1 Introduction

As of March, 1987, there were forty-eight private schools operating in Saskatchewan, providing education to 3,133 pupils, or approximately 1.6 per cent of public school enrolment (including Roman Catholic schools). A decade earlier, approximately 1,621 students were enrolled in private schools, representing 0.7 per cent of total school enrolment.

Saskatchewan's private schools range in size from two to 478 students. They are found in all regions of the province, except the far north, and are situated in all types of communities, from small rural villages to large urban centres.

Reasons why parents choose private schooling for their children will vary, but generally include: a perception that private schools provide better pupil discipline than do public schools, place a greater emphasis on basic academic skill development, offer an integrated religious/academic curriculum that better reflects the parent philosophy of life and world-view, place greater emphases on inculcating traditional moral values, and provide more acceptable role-models as teachers.

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[3] For an indepth review of private school policies in other Canadian jurisdictions, the reader is referred to the *Cross Canada Survey* resource paper prepared in conjunction with *A Study of Private Schools in Alberta*, Woods Gordon, Edmonton, 1984, and also to *The Report of the Commission on Private Schools in Ontario*, Toronto, 1985.

Almost all of Saskatchewan's private schools are sponsored by a religious organization, normally a religious denomination or independent church. Religious themes, motifs, and activities are a frequent integral element of these schools, whether it be in the form of a daily morning chapel service, scripture memorization, staff prayer meeting, Christian Ethics course, religious bulletin board displays or textbooks whose authors have woven religious content from front cover to back.

The degree of religious practice manifest varies from school to school. Nevertheless, the unifying factor which sets virtually all Saskatchewan private schools apart from public schools (excluding public Roman Catholic schools) is the religious element. It should be noted that all forty-four private schools which could be classified as religious, offer private schooling in the traditions and beliefs of the Christian religion, although there is considerable variance in both practice and dogma.

4. Should Private Schools Be Permitted to Operate in Saskatchewan?

Critics of private schools argue that such schools in some cases are educationally sub-standard, or undemocratic (e.g., elitist, promote intolerance), or threaten the well-being of the public school system, and therefore should not be permitted to exist.

The argument that Saskatchewan private schools in general offer education below minimum standards cannot be sustained. In the opinion of this review, children attending these schools are generally receiving an adequate, and in many cases, above adequate level of education. There is little argument that private schools are not doing a commendable job of teaching basic reading, writing and computational skills. For example, according to test result information provided by private school officials, students in Seventh-day Adventist or ACE schools scored at or above most national or Saskatchewan norms for achievement on the Canadian Test of Basic Skills which is administered annually in most private schools.

While the significance of such test results should not be overestimated, they can and should be used for comparative purposes as a legitimate benchmark against which parents and the public can make judgments concerning quality of education, in the same way such test results are used in the case of public school students.

Private schools also do a commendable job of instilling traditional values of hard work, honesty, decency, and obedience in their students. This, of course, should not be surprising since most private school administrators and parents place a high priority on character development as a goal of their school program.

While private school pupils are in general receiving an adequate education respecting basic skill and character development, the greatest perceived weakness of private schooling in Saskatchewan is a lack of opportunity for children to be exposed to a broad range of learning experiences, largely due to a shortage (in some cases an appalling lack) of basic learning materials (library books, science and computer equipment, reference books, art and physical education materials).

This deficiency is generally due to private school parents and organizations not possessing the financial wherewithal to purchase additional education resources, something which private school officials unanimously indicated a desire to do if financing were available. In a few cases, this lack of broad learning opportunity may be a function of both financial weakness and inadequate teacher qualifications.

Although most Saskatchewan private schools do not possess facilities and resources comparable in quality to public education, there are notable exceptions. For example, two ACE schools visited in the course of this review possess physical education facilities superior to many public elementary schools.

Mention must also be made of two other important observations. In many private elementary private schools regular, sometimes daily, participation by all students in music activities is very common. For example, in Seventh-day Adventist schools all pupils must participate in either a school choir or school band.

It was also evident that private schools strive to maintain close family-community school ties. Such relationships are often necessary for the continued operation of the school (e.g., parents participating in fund-raising activities). Skilled parents and community personnel are often utilized in direct teaching functions (e.g., Band, Home Economics, French, Carpentry).

There is no evidence upon which to base a conclusion that Saskatchewan's private schools are elitist, promote undemocratic values, or threaten the health of the public school system. Most public schools in Saskatchewan provide a greater variety of program offerings utilizing more and higher quality equipment and resources than are found in Saskatchewan's private schools. Children attending private schools come from disparate socio-economic backgrounds comparable to those found in public schools. While private schools visited were not equipped to take physically handicapped children, it was evident that in various private schools slow learner/disadvantaged children were being schooled. In some instances private school principals spoke of children being successfully educated in the private school environment who could not cope or achieve in the public school system.

According to Wilkinson[4], educational research on elitism and schooling in the United States suggests that the availability of private schools to poorer people may counter the elitism of public schools in wealthy neighbourhoods. Wilkinson notes, "The achievement of students from advantaged and disadvantaged backgrounds tends to converge over time in the private Roman Catholic schools, whereas it tends to diverge in public schools (Coleman, Heffer, and Kilgore, 1982). Such research also consistently indicates that, contrary to some charges that private schools increase intolerance and weaken social integration, students in and graduates from independent (generally Christian) schools have less prejudice against minority groups than do their counterparts from the public school system".[5]

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[4] Wilkinson, B.W. *Elementary and Secondary Education Policy in Canada*, University of Alberta, 1968.

[5] *Ibid*, pp. 47-48.

Dennis Ens. ***The Private School Situation – A Saskatoon Case Study.*** **University of Saskatchewan, M. Ed. Thesis, 1985.**

Extracts[6]

Introductory Note

Dennis Ens, at the time Vice-Principal of Nutana Collegiate in Saskatoon, administered a questionnaire to parents of children enrolled in Saskatoon's independent schools as part of his M.Ed. thesis. All five independent schools then in existence in Saskatoon co-operated in this survey.

Attached are the results of this questionnaire (Table 18). Parents were asked to indicate the degree of importance that the factors listed on the questionnaire had in their decision to send their child (children) to the private school of their choice, according to the following code:

0 – a factor given no consideration in this decision

1 – minor, or just a little, consideration

2 – some, or more than just a little, consideration

3 – considerable consideration

4 – extremely high consideration

Table 18 ranks the factors listed on the questionnaire in order of importance from a mean of 3.96 to 0.35. It is followed by a discussion of any additional factors, not listed in Table 18, which motivated parents to send their children to the private school of their choice.

Also attached are the summaries of research results with respect to three specific research questions:

- How do private schools in Saskatoon and Saskatchewan differ from other schools in their locality?

- What factors have motivated parents in Saskatoon to enroll their children in private schools?

- What changes would have to occur in the public school system in order to meet the needs and concerns of parents in Saskatoon who support private schools?

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[6] The following extracts are taken from pp. 138-141, 157-158, and 161-163 of the thesis.

Table 18

Factors Motivating Parents in Saskatoon to Enroll Their Children in Private Schools, 1984-85, and the Mean and Standard Deviation of the Scores Parents Gave Each Factor

	Factor	Mean	St. Dev.
1.	The private school promotes a reverence for God.	3.96	0.19
2.	The private school provides children with a knowledge of God.	3.94	0.28
3.	The private schools provides a Christian context and environment for all instruction.	3.92	0.34
4.	The private school provides children with a Christian philosophy of life.	3.92	0.36
5.	In the private school children are taught by Christian teachers.	3.84	0.45
6.	Public schools promote a philosophy of secular humanism.	3.50	1.02
7.	Public schools are neglecting, or moving away from, the basic moral and ethical values held by parents.	3.45	0.94
8.	In the private school children have the opportunity to spend the entire day with children of like faith and values.	3.37	1.04
9.	Teachers are more sincere and caring in the private school.	3.34	0.97
10.	Discipline is better in the private school than in the public school system.	3.27	1.10
11.	Public schools do a poor job of teaching values and morals.	3.14	1.17
12.	Drugs and alcohol are too readily available to children attending public schools.	3.00	1.36
13.	From a Christian perspective, some of the content studied in English and Literature in the public schools is not appropriate or suitable.	2.98	1.14
14.	The private school has a greater emphasis on the basics and fundamentals.	2.89	1.26

15.	The manner in which the theory of evolution is taught in science in the public school system is not appropriate.	2.84	1.26
16.	The private school teaches children according to the wishes of their parents.	2.84	1.31
17.	The private school allows for more parental participation and input.	2.83	1.27
18.	The material used and the manner in which family life and sex education are taught in the public school system is not appropriate.	2.76	1.41
19.	The private school provided a better academic education than does the public school system.	2.69	1.30
20.	Public schools are too easy and do not work their students hard enough.	1.86	1.50
21.	The private school is very conveniently located and provides ease of access for our child/children.	0.35	0.82

Question 4 on the questionnaire to parents asked them to list any additional factors, not mentioned in the listed factors, which motivated them to send their child or children to the private school of their choice. Comments made most frequently related to the idea that for many parents the private school is considered an extension of the home and the church. The school reinforces, amplifies, and extends the teachings, values, and views of life taught in the home. The school provides a continuity and consistency with what is taught and valued in the home.

Two typical examples of parents' statements are:

> The entire world and life view of the Reformed faith leads to the conclusion that all of life is religious, and education can only be in context of faith expression. Consistency of home, church, and school values and view of life is essential.
>
> We believe our children's education should be consistent with what they are taught at home and at church. To be taught one set of values and morals by the church and at home, and another set at school, and still another set by playmates, is confusing to say the least.

Factors which were noted on more than one questionnaire, and the frequency of similar responses, are listed as follows:

> The private school is an extension of the home and the church. The school provides an continuity and consistency with what is taught and valued at home. (16)

The private school teaches children to lead a Godly life. (7)

The private school teaches the whole child – body, soul, and mind. (5)

It is a mandate from God to send our children to a Christian school. (5)

Children receive more personal attention from teachers in private schools. (4)

Discipline is administered in a more positive, loving, and meaningful manner in the private school. (3)

The manner of dealing with the topic of the occult in the English curriculum in the public system is unacceptable. (2)

Peer group pressures are too great in the public system. (2)

The Christian curriculum is better than the government curriculum. (2)

We made a vow to God when our child was born that we would bring him up in the fear and knowledge of the Lord. (2)

We want to pass on to our children our Christian faith and way of life. (2)

Children are not teased or mocked because of their Christian faith in the private school. (2)

We cannot leave God, the source of all truth and knowledge, out of education. (2)

It is apparent from these results that the factors most important in motivating parents in Saskatoon to enroll their children in private schools are those associated with parents' desires to have their children grow in appreciation, acceptance, and knowledge of God and the related Christian lifestyle and philosophy. A Christian environment, context, and Christian teachers are very important to these parents. They view school as an extension of the home and church, and want it to be consistent with the home and church in terms of religious teachings, values, and lifestyle. Criticisms, or implied criticisms, of the public school system were scored as being somewhat less important in motivating parents to send their children to private school. However, the belief among private school parents that the public schools promote secular humanism and are neglecting the moral and ethical values held by parents is substantial. A significant portion of the parents believe that teachers in private schools are more sincere and caring and provide better discipline than their counterparts in the public system. The traditional concerns over the teaching of the theory of evolution, family life and sex education, and content of the English and Literature courses remain, but they are well down the list of major factors motivating parents to enroll their children in private schools.

How do private schools in Saskatoon and Saskatchewan differ from other schools in their locality with respect to:

- **(i) objectives?**
- **(ii) curriculum and instructional program?**
- **(iii) philosophy?**
- **(iv) guidance and discipline of students?**

Principals of private schools in Saskatchewan indicate that their schools have academic goals and objectives that are similar to those of their neighbourhood public schools. However, in addition to striving for high academic standards, primary school goals include the spiritual growth and development of students in the "Christian way". They emphasize that Biblical values and perspectives, and the development of a strong moral and ethical base are integral components of all their subject areas, activities, and the school environment, and are not taught only in a single subject like Christian Ethics. The schools attempt to provide an academic education in a Christian environment in a manner that is consistent with the Word of God and the Christian values taught in the home and the church. They strive to teach the whole child - mentally, physically, socially, emotionally, and spiritually. Their educational philosophy is theistic; they are very opposed to secular humanism. The school is seen as an extension of the home and church, and in many schools, parents are expected to be actively and personally involved in the activities and programs of the school. Disciplinary procedures and philosophies vary from school to school, but are stated to be Bible-based and delivered in a positive, caring manner. In some of the schools, codes of conduct, dress, and attitude are quite specific and more rigid than in the public system. While most of the forms of correction and discipline used in the schools are not unlike those employed in the public schools, unlike the public schools, they also reserve the right to dismiss students from their schools. Attendance at their schools is seen to be a privilege rather than a right.

What factors have motivated parents in Saskatoon to enroll their children in private schools?

The factors most important in motivating Saskatoon parents to enroll their children in private schools are those associated with parents' desires to have their children grow in appreciation, acceptance, and knowledge of God and the associated Christian lifestyle, values, and philosophy. The factors parents selected as being most important in their decision to enroll their children in a private school were: the private school promotes a reverence for God; the private school provides children with a knowledge of God; the private school provides a Christian context and environment for all instruction; and the private school provides children with a Christian philosophy of life. A Christian environment, context, and Christian teachers are also very important to the parents. Many of them view school as an extension of the home and church, and want it to be consistent with the home and church in terms of religious teachings, values, and lifestyle. There are also a substantial core of private school parents who believe that the public schools promote secular humanism and are neglecting the traditional moral and ethical values held by parents. Concerns relating to the academic quality of education provided by the public schools rate near the bottom of the factors motivating parents to enroll their children in private schools.

What changes would have to occur in the public school system in order to meet the needs and concerns of parents in Saskatoon who support private schools?

A large majority of the parents surveyed believe that the public school system in Saskatoon could not adapt itself sufficiently to satisfy their needs. More than 87% of the parents answered "No" to the question, "Is it conceivable that the public school in your community could adapt itself sufficiently to meet the needs and concerns you have for your children?" Many of these parents view the philosophy of the public system to be humanistic and opposed to the theistic approach they desire for their children's education. They want all subject areas to be taught from a Biblical perspective, and realize that Christianity is the only true religion and the Bible is the basis for all truth and morals. They recognize that not all teachers in the public system are, by their definition, Christian. They insist that their children be taught by Christian teachers in a Christian environment.

Donald A. Erickson, Lloyd MacDonald, and Michael E. Manley-Casimir. ***Characteristics and Relationships in Public and Independent Schools.*** **Center for Research on Private Education, University of San Francisco, and Educational Research Institute of British Columbia, Vancouver, February 1979.**

Summary

Purpose of Study

The Government of British Columbia started funding some accredited independent schools in the fall of 1978. The major purpose of this study was to establish some baseline data on the characteristics of public and independent schools in the spring of 1978 before this funding started so that the impact of funding could be ascertained at a later date, in comparison with this baseline data.

The study was a social scientific study. The researchers used survey data to test the goodness of fit of three alternative models (discussed below) of independent and public schools -- models based on a thorough review of the educational literature, and articulated and distributed for peer review prior to the collection of the survey data in the spring of 1978. In the process, the researchers also compared and contrasted the populations of students, parents, and teachers involved in independent and public schools.

Sample Size

This is apparently the only baseline demographic study that has been conducted of independent schools in any Canadian province.

The researchers started with a sample frame of 92 independent and 45 public schools. The independent schools were selected from the membership list of FISA (the Federation of Independent Schools Association); the public schools were selected from those that were geographically closest to the schools in the independent school sample. The researchers attempted to interview all students in grades 4 to 12 in each independent school, and all students in either the odd or even grades between 4 and 12 in each public school, which procedures would have yielded roughly 12,000 students in each of the independent and public school sectors. They attempted to interview all teachers and administrators in both independent and public schools. They mailed questionnaires to one-fifth of all parents associated with both the independent and public schools.

The researchers succeeded in administering student questionnaires in 41 independent schools (44.5 percent of the intended sample) and 15 public schools (33 percent of intended); and teacher questionnaires in 47 independent schools (51 percent of intended) and 14 public schools (31 percent of intended). They obtained parent questionnaires from 47 independent schools (51 percent of intended) and 18 public schools (40 percent of intended).

Characteristics of Respondents

Students enrolled in independent and public schools ***did not differ significantly*** with respect to the following characteristics:

- sex.
- whether parents claimed to have read to them during early childhood.
- frequency with which they reported that they had visited relatives or friends in another town; seen animals in a farm or zoo; gone riding on an airplane; gone on a family vacation by car; eaten in a restaurant; gone picnicking, swimming, or fishing; gone to a baseball game, football game, or other sports event; or gone to a music concert.

Parents from independent and public schools ***did not differ significantly*** with respect to:

- marital status;
- home-ownership (90.1 and 89.9 percent for independent and public schools, respectively);
- income levels;
- whether they reported that they had telephones, dishwashers, vacuum cleaners, electric sewing machines, dictionaries, encyclopedias, and daily newspapers at home;

Teachers in independent and public schools ***differed significantly*** with respect to:

- salaries (the public school norm was between $15,000 and $20,000 and the independent schools norm between $5,000 and $10,000);
- sex and marital status (independent schools relied more on unmarried females);
- age (independent school teachers were younger);
- hours of teaching (public schools were more standardized, independent schools more variable);
- career orientation (public school teachers were more career-oriented, while independent school teachers were more likely to move in and out of education as other responsibilities permitted, or as they felt a personal sense of mission to minister or serve in different areas).

Students in independent schools ***differed significantly*** with respect to:

- length of time in the same school (independent school students had been longer in the same school);
- whether they reported that they had newspapers, typewriters, and encyclopedias in their homes (independent school students reported more);
- whether they reported a colour television set in their home (public school students reported more).

Parents from independent and public schools ***differed significantly*** with respect to:

- family size (independent school families were larger);
- formal education (independent school parents had more);
- occupation (independent school fathers were more likely to be a professional or an entrepreneur);

- children's educational expectations (independent school parents had higher expectations with respect to high school graduation and university);
- religious affiliation (59.5 percent of independent school parents reported that they were Catholic compared to 19.7 percent for public school parents);
- ethnic and linguistic background (independent school families were more heterogeneous in both regards, a higher proportion being native Indian or oriental, and 12.3 percent of students coming from homes where English was *not* the language most often spoken, compared to 6.2 percent for public schools).

Models of Schools

Based on their review of the educational literature, the researchers proposed three models of school structure and operation: (1) a *Gemeinschaft* model of an independent school; (2) a professionalism model; and (3) an alternative *Gemeinschaft* model of public schools. The three models are represented schematically in Figures 17, 19, and 20, which are attached to this summary.

(1) The Gemeinschaft Model

This is their basic model of an independent school. A *Gemeinschaft* is a special kind of close-knit community or fellowship,

> composed of like-minded people strongly committed to a common purpose or set of ideas, people who view themselves as different, in some important respects, from everyone else. In a *Gemeinschaft*, competence is not gauged in conventional technical terms; it is more strongly related to attitudes and values. Thus, people who perform special tasks in a *Gemeinschaft* will often be selected in unorthodox ways.[7]

Specific public policy conditions in the first column of Figure 17 (little or no public funding, availability of alternatives, and regulatory leeway) affect the school boundary conditions (exacting affiliation, voluntary affiliation, selective admissions, and unusual personnel policies) which in turn give rise indirectly (by means of organizational jeopardy, transference, and client homogeneity), and directly, to *Gemeinschaft*, which is the essential ingredient of the school's effectiveness as perceived by the students, teachers, and parents.

Each of the numbered arrows in Figure 17 represents one particular hypothesis about how a *Gemeinschaft* school works, that the researchers attempt to test using the survey data. For example, institutional jeopardy, except when extreme, is hypothesized to promote commitment on the part of teachers, students, and parents. On the other hand, jeopardy may have drastically negative effects on commitment when a school principal is inept. Success in teaching-learning encounters is attributed to teacher commitment, but is also a function of the adequacy of curricular materials which may be compromised in schools with meagre funding. Client homogeneity, which may embody numerous possible advantages, could also lead to stultifying parochialism.

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[7] Erickson *et al.*, pp. 9-10. This definition of *Gemeinschaft* owes much to the work of Ferdinard Toennies, "*Gemeinschaft* and *Gesellschaft*", in Talcott Parsons *et al.*, *Theories of Society: Foundations of Modern Sociological Theory*, vol. I (Glencoe, Illinois: Free Press of Glencoe, 1961), pp. 191-201.

(2) *The Professionalism Model*

This is the researchers' basic model of a public school. The model depends on adequate financial support since

> people will not invest in long periods of training unless they expect to be paid well, and since sense of professionalism is linked to good salaries and working conditions. . . . Improvements in teacher salaries and working conditions attract more competent, well-trained people into the profession and enhance the morale and the self-image of teachers. Teachers who are well-prepared, well paid, and given good working conditions respond well. They view themselves as responsible, competent professionals. They demonstrate high commitment. Their competence and commitment induce high levels of performance from their students. When they perceive that their students perform well, teachers devote themselves even more to their work and to professional self-improvement. Students and parents, seeing the dedication and skill of these teachers, respond with commitment of their own. They place much trust in teachers, grant them much autonomy, and thus contribute to further teacher professionalism.[8]

(3) *The Alternative Gemeinschaft Model*

This is the researchers' alternative model of public schools. Publicly-funded and regulated public schools can conceivably achieve *Gemeinschaft* in ways different from independent schools. Public schools may achieve voluntary affiliation by introducing "alternative schools" and "open enrollment" policies. Special public schools may feature selective admissions by being designed for particular types of students. Some public schools may utilize unorthodox personnel policies, informal and extra-legal, which are not described in statutes and regulations. Teachers may manage over the years to transfer in and out until they have sorted themselves into different school faculties whose views, school by school, are notably homogeneous, for example, with respect to educational philosophy.

Institutional jeopardy may be produced, not only by a shortage of money, but by an imaginative, skillful leader who manages to define a special school purpose which, though particularly attractive, is difficult to achieve and easily aborted by staff members who do not contribute their utmost. Client homogeneity may be achieved by residential segregation, or destroyed by the creation of huge schools which draw students from large areas. Transference may be achieved achieved in public schools which serve particularly homogeneous neighbourhoods, especially when these neighbourhoods are homogeneous along religious and/or ethnic lines.

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[8] Erickson *et al.*, pp. 47-48.

Research Results

The data do not support any blanket conclusions concerning the inferiority or superiority of public or independent schools. Rather they support the conclusion that public and independent schools are characterized by significantly different dynamics with respect to their structure and operation.

(1) An Analysis of Differences Between Public and Independent Schools

The researchers compare public and independent schools with respect to characteristics such as school effectiveness as judged by teachers and parents; commitment on the part of students, teachers, and parents; student enthusiasm for school work; the perception by students that they are treated justly; student alienation; and student prejudice.

These comparisons between public and independent schools strongly support the *Gemeinschaft* model for independent schools.

> Jeopardy, reflected in the responses of parents, is *much* more pronounced in independent than in public schools. As compared with public school parents, independent school parents have a notably greater tendency to describe people at their schools as pulling toward a common goal, and they similarly describe their schools as responsive to parents and acknowledging the need of parental help. As compared with the public school teachers in our sample, the independent school teachers have a greater tendency to see their schools as having a special, widely agreed-upon mission; to describe parent commitment, manifested in a willingness to help out, as high; to describe social relationships in the school as cohesive and supportive; to describe community involvement as extensive and highly valued by the school; to describe themselves and their colleagues as highly committed to the job and to each other; and to describe their work rewards as strong. As compared with their public school counterparts, students in independent schools express a dramatically greater willingness to help out in school functions, describe their teachers as more committed, exhibit less prejudiced responses regarding minorities, less frequently attribute rewards and punishments in school to luck or injustice, are more conscious that their schools are in jeopardy, describe their schools as more "special", find their teachers and classes more attractive, express more enthusiasm for their work, and exhibit more self-confidence.[9]

(2) An Analysis of Relationships Among the Various Factors in the First Two Models

The survey data were only sufficient to test the hypothesized relationships in the *Gemeinschaft* and Professionalism models.

Statistical correlations support the conclusion that public and independent schools, when the latter are completely privately supported, are characterized by significantly different dynamics.

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[9] Erickson *et al*, pp. 164 and 168.

Explanations for school effectiveness are quite different between the two sectors.

The Professionalism model helps explain school effectiveness in public schools, but not at all in independent schools. For example, only in public schools is there a significant relationship between professional autonomy as perceived by teachers and measures of school effectiveness such as student self-confidence and enthusiasm for their work.[10]

On the other hand, the *Gemeinschaft* model helps explain school effectiveness in independent schools. Social cohesion as perceived by parents and a moderate degree of institutional jeopardy as perceived by parents are the two factors most strongly correlated with measures of school effectiveness in independent schools.

Overall Conclusions

There exist different models of the structure and operation of effective schools. Public policies such as funding and regulation in turn affect the structure and operation that schools choose. Faced with different policy parameters, public and independent schools in British Columbia differed significantly with respect to structure and operation. Public schools corresponded most closely to the Professionalism model, while independent schools corresponded most closely to the *Gemeinschaft* model.

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[10] This is not to say that no teachers in indepependent schools are professional teachers or do not view themselves as professional teachers, but rather that their professionalism is not the ingredient that makes an independent school effective.

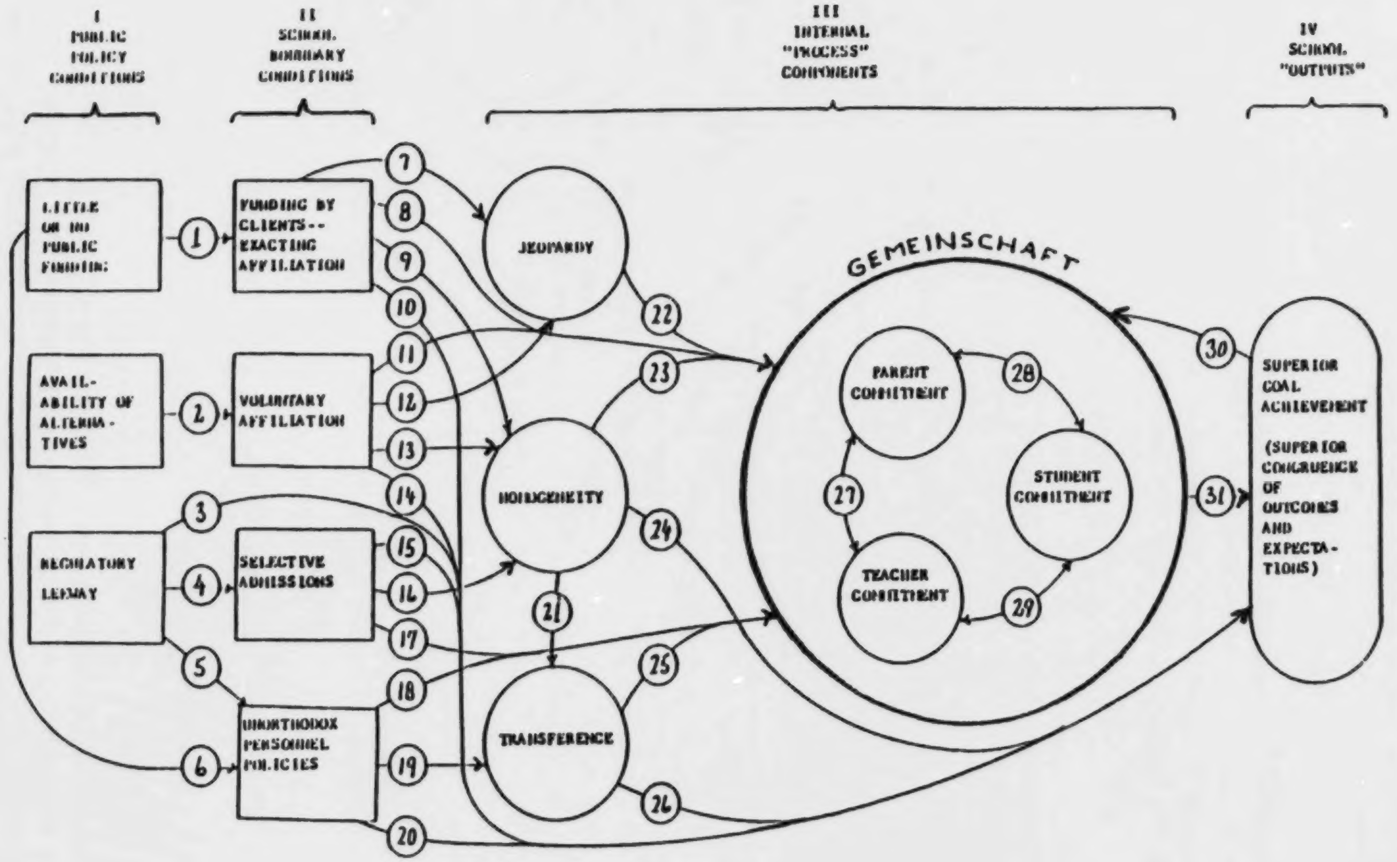

Fig. 17.--The Gemeinschaft Model

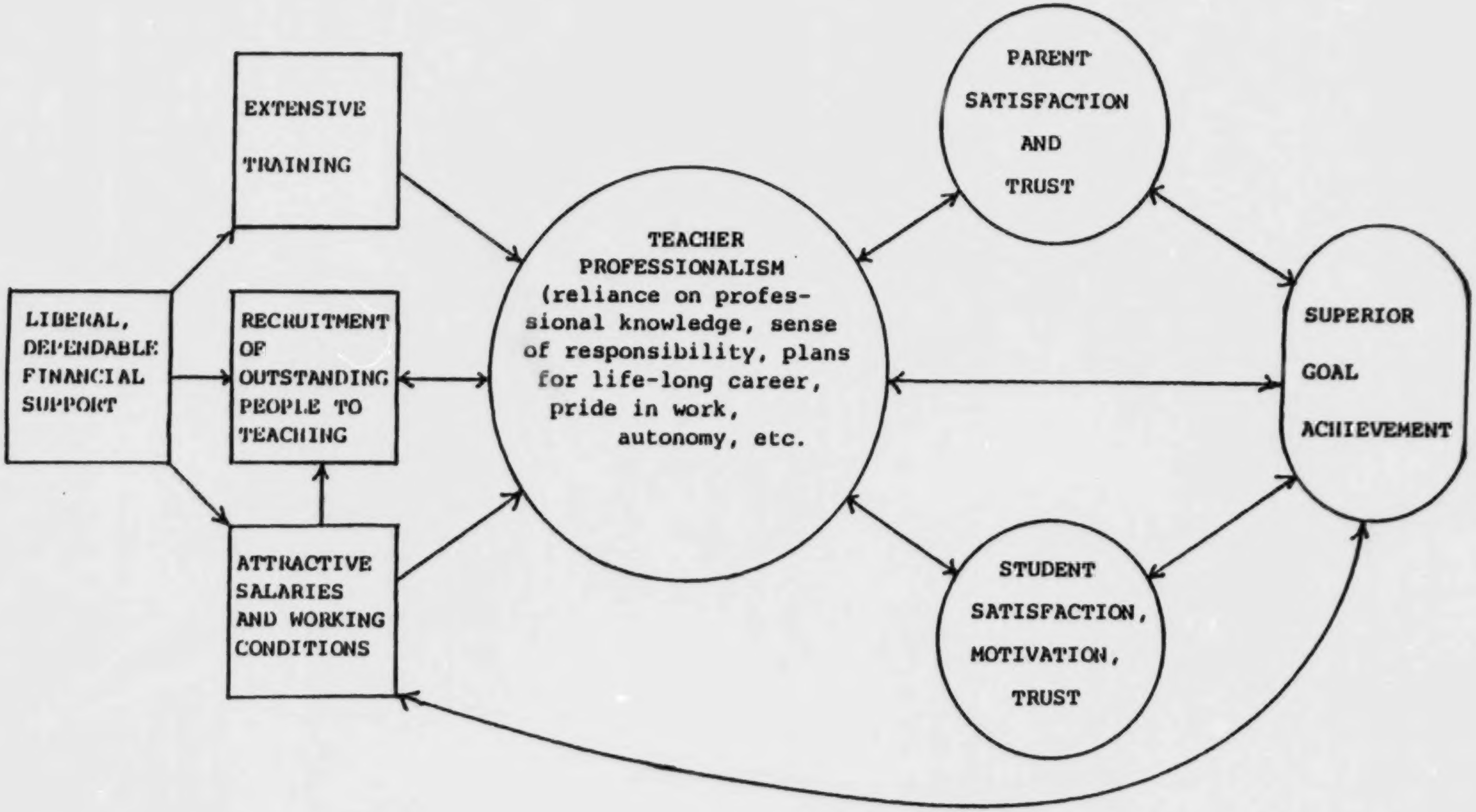
EXTENSIVE TRAINING
LIBERAL, DEPENDABLE FINANCIAL SUPPORT
RECRUITMENT OF OUTSTANDING PEOPLE TO TEACHING
ATTRACTIVE SALARIES AND WORKING CONDITIONS
TEACHER PROFESSIONALISM (reliance on professional knowledge, sense of responsibility, plans for life-long career, pride in work, autonomy, etc.
PARENT SATISFACTION AND TRUST
STUDENT SATISFACTION, MOTIVATION, TRUST
SUPERIOR GOAL ACHIEVEMENT

Fig. 19.--Postulated connections between teacher professionalism and superior goal achievement.

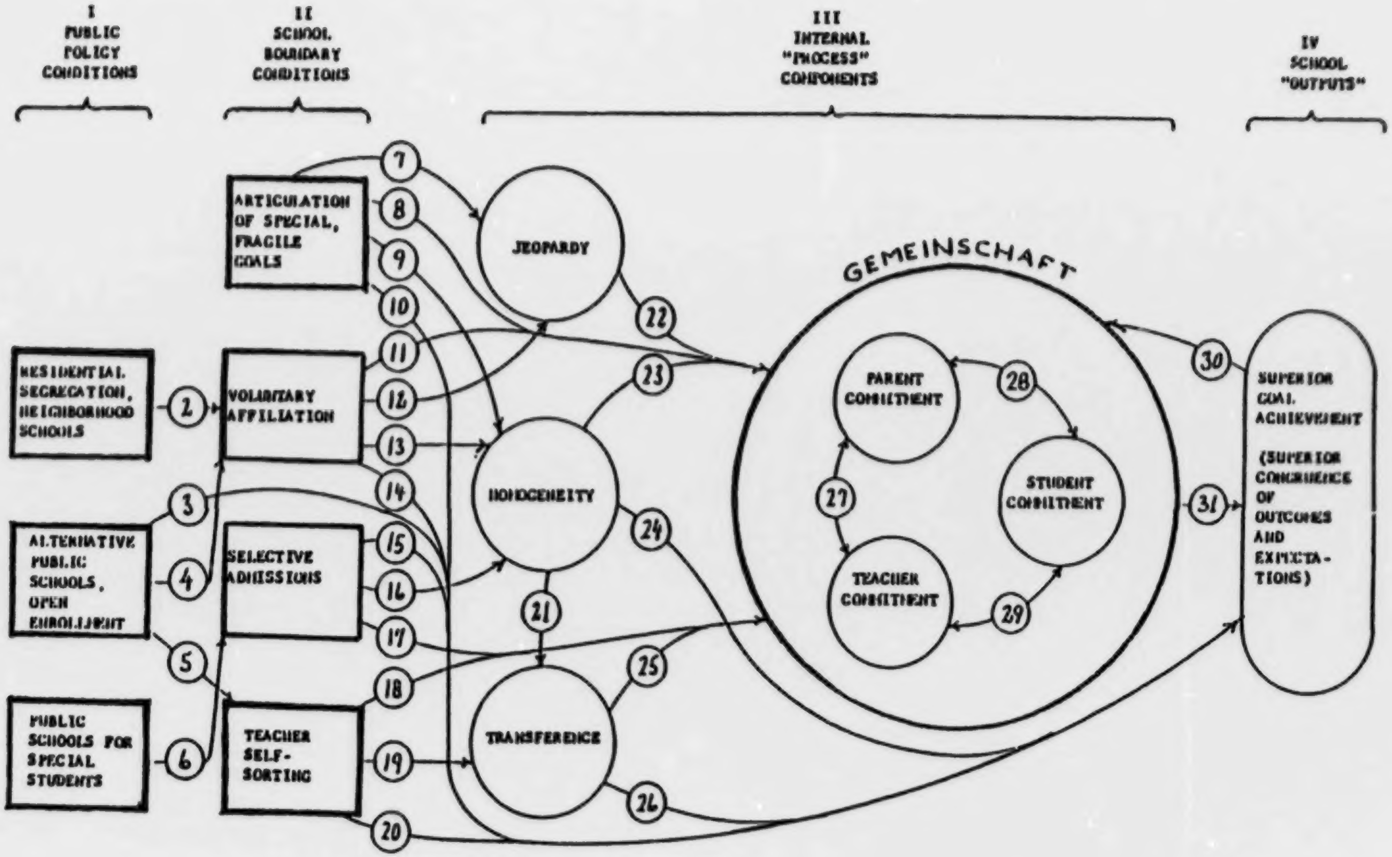

Fig. 20.--The Alternative Gemeinschaft Model

James Coleman *et al.* *Public and Private Schools. An Analysis of High School and Beyond: A National Longitudinal Study for the 1980's.* National Opinion Research Center, Chicago, Illinois, and National Center for Education Statistics, Washington, D.C., November 1981.

Summary

Purpose of Study

Recent policy discussions in the United States have included proposals both to increase and to decrease the role of private schools in American education. Such policy proposals are based in part on assumptions about the current roles and current functioning of public and private schools in the United States.

The study was designed to provide empirical evidence relevant to such policy proposals, for the answers to such proposals depend in part on values, but also on facts such as how well do public and private schools actually work for children. Are private schools divisive, and, if so, along what lines? Are private schools more easily managed than public schools, and if so, why?

The study covers four major areas of interest in the public and private schooling issue: (1) student composition within the public and private school sectors; (2) resources available in these schools; (3) the functioning of these schools; and (4) the outcome for students in the schools. The present summary focusses primarily on student composition.

Sample Size

This is the most thorough comparison that has ever been undertaken of public and private schools in the United States.

The researchers started with a sample frame of 984 public and 138 private high schools, selected from the National Opinion Research Center listing of American high schools, the most complete listing available. They succeeded in administering questionnaires to school officials in 893 public high schools (91 percent of the intended sample) and 122 private high schools (88 percent of intended). In addition, they administered questionnaires to 51,339 seniors and sophomores in the public high schools (83 percent of eligible students) and 7,371 seniors and sophomores in the private high schools (94 percent of eligible).

Two-thirds of the private high school students attended Catholic schools. Therefore, at times the study compares public schools with all private schools, and at other times breaks the private schools into two groups – Catholic and non-Catholic.

Student Composition

(1) Religious Background

Private schools are, not surprisingly, divisive along religious lines, segregating different religious groups into different schools. Thirty percent of private schools, enrolling 66 percent of all private school students are Catholic, and 25 percent of other private schools, enrolling 12 percent of private school students, are affiliated with other religious denominations. While over 90 percent of the students in Catholic schools are Catholic, the vast majority of Catholics are still enrolled in public schools, given the relative proportion of Catholics in the United States.

(2) Racial Background

Private schools as a group enrol significantly fewer black students, but roughly the same proportion of Hispanics as public schools. Within the private and public school groups, however, there is less internal segregation among private schools and more internal segregation among public schools. That is, within the private school sector (and particularly within the Catholic school sector), black students are distributed more randomly, whereas within the public sector, suburban schools tend to be predominantly white and urban schools heavily black. The end result of these two opposing forces, between-sector and within sector, is that the segregation of black and white students in American schools is no greater and no less than it would be if there were no private schools, and their students absorbed into the public sector, distributed among schools as public sector black and white students are now distributed.

(3) Economic Background

These results mirror those with respect to racial background. First, comparing the three groups, non-Catholic private schools contain students from *somewhat* higher income backgrounds and the Catholic schools contain students from *slightly* higher income backgrounds that the public schools. Within the three groups however, there is more internal segregation among public schools than among private schools (both Catholic and non-Catholic). The end result of these two opposing forces is that American schools show *slightly* greater segregation by income than would be the case if private school students of differing income levels were absorbed into the public schools in the same way that public school students of differing income levels are currently distributed among schools.

(4) Handicapped Students in Public and Private Schools

The data are not sufficient to make strong inferences about the relative proportions of handicapped children in public and private schools since the results from the student and school questionnaires are contradictory. The school questionnaires reported a higher incidence of handicapped students in the public schools; the student questionnaires did not, except for the category of severe, limiting handicaps. The researchers speculate, among other things, that there exists in the public sector an administrative incentive in the form of government aid for classifying students as handicapped, an incentive that does not exist to the same degree in the public sector.

School Resources, Functioning of Schools, and Student Outcomes

While this present summary of the Coleman report focusses on the findings with respect to student composition, the following are some of the other findings with respect to school resourcs, functioning of schools, and student outcomes.

(1) Non-Catholic private schools have sharply lower student-teacher ratios than the public schools, while the Catholic schools have slightly higher ratios.

(2) Private schools do not provide as wide an educational range as public schools do, particularly in vocational and other nontraditional courses and programs.

(3) Private schools provide a safer, more disciplined, and more ordered environment than do public schools.

(4) Private schools (both Catholic and non-Catholic) are generally smaller than public schools. In the non-Catholic private schools, this smaller size is weakly associated with a greater degree of participation in sports and other extra-curricular activities, but not in the Catholic schools.

(5) Private schools on average produce better student cognitive outcomes than public schools.

(6) With respect to character and personality development, students in non-Catholic private schools show *slightly* higher levels of self-esteem and higher gains from the sophomore to senior levels than students in the public or Catholic schools.

(7) The evidence neither confirms nor denies whether private schools are more or less succeesful in creating an interest in learning compared to public schools.

(8) While students in private schools generally have higher academic aspirations with respect to post-secondary studies, it is not clear to what extent the private schools themselves serve to generate these higher aspirations.

(9) The report contains no evidence with respect to the relative economic efficiency of public and private schools.

Overall Conclusions

The Coleman report confirms an earlier finding of Leo Pfeffer that residential segregation in American cities results in individual public schools that are more homogeneous in economic, social, and ethnic groupings than individual private schools. Individual private schools, particularly religiously-based schools, are, of course, more homogeneous with respect to religion, but more heterogeneous with respect to social, eocnomic, racial, and ethnic origins.[11]

The Catholic private schools more nearly approximate the "common school" ideal of American education (espoused, among others, by Horace Mann after 1837) than do public schools. Although Catholic schools enrol fewer blacks than public schools, there is less internal segregation in both racial and economic terms than in public schools. Students' aspirations in Catholic schools are less class-based, students more generally say that discipline is fair, and poor black students appear to learn more in Catholic schools than in public schools. "The achievement levels of students from different parental educational backgrounds, of black and white students, and of Hispanic and non-Hispanic white students are more nearly alike in Catholic schools than in public schools or other public schools. In addition, the educational aspirations of students from these different backgrounds are more alike than in public or other private schools."[12]

"Important factors in bringing about higher scholastic achievement in private schools than in public schools are the greater academic demands and more ordered environment in the private schools. The evidence shows not only that the sectors differ greatly on these dimensions, but also that within the public schools, students who are better disciplined and are in schools with more ordered environments achieve more highly."[13] While the Coleman report demonstrates associations between school policies and student achievement -- such as policies to require homework, to establish discipline, and to reduce absences -- the report does not say how one achieves consensus within a school to implement such policies.[14]

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[11] Leo Pfeffer, *Creeds in Competition* (New York: Harper and Brothers, 1958), p. 81.

[12] Coleman *et al.*, p. xxxi.

[13] *Loc. cit.*

[14] Gerald Grant, *The World We Created at Hamilton High* (Cambridge, Mass.: Harvard University Press, 1988), p. 169.

Appendix 15

Laws and Regulations Pertaining to Independent Schools in Other Provinces

Foreword

This summary of laws and regulations pertaining to independent schools in six other provinces has been compiled, at the request of the Advisory Board, from correspondence, both written and verbal, with Department officials in other provinces responsible for policy development or administration with respect to private or independent schools in their respective provinces, and from materials received from such officials. Officials in all six provinces have reviewed and commented upon the initial draft of this appendix (dated January 10, 1990), which revisions and comments have been incorporated into this final version.

Laws and regulations in Newfoundland and Prince Edward Island have not been reviewed, since these two provinces have only a few independent schools each. The most significant omission from this Canada-wide summary is the lack of information with respect to Quebec. Quebec has a *Private Education Act* which dates from 1968 and has put in place extensive regulations and administrative procedures governing the operation of private schools. However, these laws and regulations are of a fundamentally different character from those found in other provinces owing to the different legal and educational traditions in that province. The Minister's Advisory Board for Independent Schools elected not to review the Quebec situation in detail.

The laws and regulations are summarized under 14 headings. The quotations are direct quotations, mostly from provincial legislation and regulations, but also in some cases from written correspondence received. The large number of quotations reflects the desire to present a factual summary of the situation in other provinces.

A. Legal Framework

Quebec and British Columbia are the only two provinces that have statutes that pertain specifically to the operation of independent schools: the Quebec *Private Education Act* dates from 1968 and the British Columbia *Independent School Act* dates from 1977. The Quebec legislation has not been revised significantly since 1968, although some significant modifications are presently being considered. The B.C. legislation and regulations underwent a major revision in 1989, which are presently in the process of being implemented.

Alberta, Manitoba, and Ontario recognize independent or private schools in their general education acts. In Alberta, most legislation has been enacted by regulation, starting around 1967. Significant revisions occurred in the wake of the *Wiebe* decision in 1978 and the *Jones* decision in 1986. The entire *School Act* underwent a major revision, including the provisions regarding private schools, in 1988, which brought forth new regulations for private schools in 1989.

In Manitoba, reference to private schools occurs in both *The Public Schools Act* and *The Education Administration Act*. Most regulation and administration relates to the funding of eligible private schools. In the wake of promises to increase the level of funding by both the government and opposition parties during the 1989 Manitoba election, revisions to the legislation and regulation providing for significant increases in funding have just been made (1990).

In Ontario, reference to private schools first appeared in *The School Administration Act* in 1962. Legislative provisions concerning private schools have not changed since this time, notwithstanding either the consolidation of all their educational acts in 1974 (like Saskatchewan did in 1978), or a major commission on private schools in Ontario (the Shapiro Commission) in 1985. Ontario has no regulations with respect to private schools.

New Brunswick and Nova Scotia do not refer to independent or private schools in their educational legislation. Therefore, such schools, while they exist, do not operate under the authority, responsibility, direction, or supervision of the Minister of Education. However, such schools are tangentially affected by the compulsory attendance requirements of the general education acts. Accordingly, both provinces have put in place arrangements for satisfying the Department that children enrolled in independent schools are receiving "efficient instruction" outside the public school system.

B. Statements of Principles

1. British Columbia

The preamble to the British Columbia *Independent School Act* states

> Whereas the purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy. . .

2. Alberta

The preamble to *The School Act* states

> Whereas the best educational interests of the student are the paramount considerations in the exercise of any authority under this Act; and
>
> Whereas parents have a right and a responsibility to make decisions respecting the education of their children; and
>
> Whereas there is one publicly funded system of education in Alberta whose primary mandate is to provide education programs to students through its two dimensions, the public schools and the separate schools; and

Whereas the education community in making decisions should consider the diverse nature and heritage of society in Alberta within the context of its common values and beliefs. . .

C. Administrative Responsibility

The existence of various categories of independent or private schools pervades both law and practice in the six provinces reviewed. The reasons given by Department of Education officials in these provinces for categories of schools include the following:

(1) It is unreasonable to expect all new independent schools to provide a standard of instruction for secondary level accreditation (in the case of Ontario) or for funding (in the case of Manitoba) during their first year of operation. Registration recognizes the existence of the school; accreditation refers to an additional departmental sanction of the school's program.

(2) The requirements for compulsory attendance of school-age children are different from the requirements for secondary level accreditation or funding. Not everyone who attends school is expected to graduate from high school or go to university.

(3) *The Charter of Rights and Freedoms* and its provision for freedom of conscience and religion requires a category of schools such as registered schools which are not necessarily required to utilize provincially certified teachers nor follow the provincially prescribed curriculum or some equivalent. (Department officials in Alberta referred explicitly to the *Wiebe* and *Jones* cases.)

(4) Registered schools are not necessarily inferior schools. They may be schools that are identifiably different from public schools. While they may appear to be weak in areas that are more measurable to an outsider, they may be stronger in areas that are more intangible and readily observable to the parents with children in the school.

1. British Columbia

The Independent School Act provides for the appointment of an inspector of independent schools who is responsible to the minister for the administration of the Act. The Act also provides for the classification of independent schools into five groups. Independent school authorities apply for classification into one of these five groups. Upon receipt of such an application, the inspector issues or renews a certificate of group classification which classifies the independent school into one of these groups in accordance with the requirements for each group.

Essentially, British Columbia has three classifications of accredited schools, which receive 50 percent, 35 percent, and 0 percent funding, respectively, and two classifications of registered schools, which receive 10 percent and 0 percent funding, respectively.

The inspector may also "recognize different grades within an independent school for the purposes of issuing not more than 2 different certificates of group classification with respect to that independent school." For instance, a particular school may be a Group 1 (accredited) school for grades K-10 and a Group 3 (registered) school for grades 11 and 12, if they cannot yet meet the more stringent curricula and facilities (e.g. science lab) requirements for Grades 11 and 12.

2. Alberta

In Alberta, the Department of Education lays down general policies with respect to private schools in accordance with the laws and regulations. The regional offices of the Department are responsible for registering, accrediting, inspecting, and evaluating private schools.

The School Act provides for one category of registered schools, which are not funded, and one category of accredited schools, which are funded at 50 percent of public school per pupil costs. Some schools are accredited but not funded by the provincial government because they are funded from other sources like the federal Department of Indian Affairs.

3. Manitoba

Private schools relate to the Department of Education. The Department has one (part-time) liaison officer who is responsible for visiting and collecting information on private schools. While none of his responsibilities are laid down in law or regulation, the most important part of his responsibilities is to certify that funded schools are providing a standard of education equivalent to that provided in the public schools.

As much by default as by design, Manitoba has two categories of schools: funded and non-funded. Funded schools establish a relationship with the Department by applying for funding. Non-funded schools establish a relationship with the Department by informing the Department or a local superintendent of their existence when they get started, but the way in which this is done is not specified in law or regulation, and remains ad-hoc and informal. The Department maintains a registry of private schools (both funded and non-funded) and all schools on the registry are exempt from municipal property taxation. Beyond this, non-funded schools exist in something of a legal vacuum.

4. Ontario

The Ministry of Education in Toronto and the regional offices share responsibility for policy development and administration.

Section 15 of *The Education Act* states that

> every private school shall submit annually to the Ministry on or before the 1st day of September a notice of intention to operate a private school, [which] shall be in such form and shall include such particulars as the Minister may require.

Such notices of intent are submitted to the Provincial Co-ordinator of Private Schools in the Ministry of Education, on a special form supplied by the Ministry. Upon receipt of such a notice from a new school, a staff member from the regional office then carries out an initial inspection of the school to determine if the school meets the definition of a private school under the definitions' section of *The Education Act*. (See section D.4. below.)

As much by default as by design, Ontario has three categories of private schools. Schools for which a notice of intent has been received and an initial inspection carried out are referred to as "registered" or "listed" schools.

At the request of a private school, the regional office will also carry out a subsequent inspection in respect of the standard of instruction for high school diploma purposes. Schools which pass such inspections are informally referred to as "accredited" or "registered/inspected" schools. Once a school is accredited, the Ministry will start keeping records of student marks for Grades 9 through 12 for the purpose of granting high school diplomas. The regional offices of the Ministry are responsible for developing the criteria for accreditation for their region. While these are generally similar, they are not standardized throughout the province.

In addition, there exist in Ontario a number (the Ministry does not know how many) of "unregistered" schools which are presently operating outside *The Education Act*. The Ministry is not presently taking any action against these schools.

5. New Brunswick

There are two "traditional" private schools in New Brunswick that were established by private acts of the legislature, and about 30 primarily church-based schools that have been established since the late 1970s, which "do not operate under the authority, responsibility, direction, or supervision of the Minister of Education." However, all children of compulsory school age must be enrolled in a public school or under "efficient instruction elsewhere".

In 1978-79, the Department of Education and representatives of church schools agreed upon the following procedures to satisfy the Minister that children in church schools were receiving "efficient instruction elsewhere", thereby releasing them from the legal obligation to attend a public school:

(1) Each parent applies annually to the Minister of Education, on a form provided by the Minister, to have his/her children exempted from the obligation to attend a public school;
(2) Each school completes an annual questionnaire on its facilities and programs, also on a form provided by the Minister;
(3) A department official visits each school annually to determine that efficient instruction is taking place. The Department does not actually approve the educational program of the schools, it only approves the exemption from attending public school;
(4) The Department keeps a registry of these schools and advises the school districts in which the children would normally attend school that these children are under

> efficient instruction elsewhere.

While the Minister "respects the right of parents to choose an alternative form of education for their children, the Minister does have a certain legal responsibility and concern for all public school age children." To date, "the Minister has been pleased with the co-operation she has received from officials of the independent schools." No parent has yet been denied permission. Bad schools tend to die out of their own accord.

6. Nova Scotia

Until the 1970s, Nova Scotia generally had eight or fewer private schools at any time, but there are now (1989) 28 private schools, most of them church-based. The only reference to private schools is in *The Education Act* regulations with respect to compulsory attendance, which exempt a child of compulsory school age from attending a public school, among other things, if

> an inspector and/or superintendent of schools certifies that the child is receiving training and instruction in a private school, at home or elsewhere, equivalent to that which he would be receiving if he were in regular attendance in a school serving the section in which he resides, and a teacher certifies that the child has passed a satisfactory examination in a grade of work suitable to the child's age and previous opportunities for receiving an education.

Nova Scotia has nine inspectors of schools who visit both public and private schools, and who are responsible for determining that the private schools are providing instruction equivalent that of the public schools. The Department has not developed any formal criteria for inspectors to use when visiting private schools.

D. Eligibility Criteria

1. British Columbia

In *The Independent School Act*, an independent school is defined as

> a school that is maintained and operated in British Columbia by an authority, and offers an educational program to 10 or more school age students, but does not include
> (a) a public school or Provincial school, or
> (b) a school that
>   (i) solely offers religious instruction,
>   (ii) solely offers language instruction,
>   (iii) solely offers a program of social or cultural activities,
>   (iv) solely offers a program of recreational or athletic activities, or
>   (v) is designated by the inspector.

"School age" refers to ages 5 to 18 inclusive.

In the context of *The Independent School Act*, "teacher" means a "person employed by an authority to provide an instructional program to students or to administer or supervise the provision of an educational program to students."

"Principal" means "the teacher responsible for administering and supervising an independent school." The authority that operates each school "shall designate a teacher to be the principal of the independent school."

The "authority" operating an independent school must be either

(a) a society incorporated under *The Society Act*,
(b) a corporation incorporated under *The Company Act* or a private Act, or
(c) a person designated, by regulation, as an authority that operates or intends to operate an independent school.

2. Alberta

In the context of *The School Act*, which also applies to private schools, a "school" means

> a structured learning environment through which an education program is offered to a student by
> (i) a board,
> (ii) an operator of a private school,
> (iii) an early childhood services program private operator,
> (iv) a parent giving a home education program, or
> (v) the Minister.

A "private school" means "a school registered under section 22" of the Act.

There is no minimum number of students for *registered* schools. *Accredited* schools must have enrolled a minimum of 7 students from 2 or more families.

3. Manitoba

Under *The Education Administration Act*, a "public school" means "an institution for education purposes established and maintained under this Act or *The Public Schools Act*."

A "private school" means "any school, other than a public school, which provides a curriculum and a standard of education equivalent to that provided by the public schools, but does not include any home or place to which clause 262(b) of *The Public Schools Act* applies."[1]

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[1] Section 262(b) relates to home-schooling.

4. Ontario

In *The Education Act*, a "private school" is defined as

> an institution at which instruction is provided at any time between the hours of 9 a.m. and 4 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school courses of study and that is not a school as defined in this section.

A "school" is defined as

> i. the body of public school pupils or separate school pupils that is organized as a unit for educational purposes under the jurisdiction of the appropriate board, or
>
> ii. the body of pupils enrolled in any of the elementary or secondary school courses of study in an educational institution operated by the Government of Ontario,
>
> and includes the teachers and other staff members associated with such unit or institution and the lands and premises used in connection therewith.

5. New Brunswick

There are no laws or regulations in this respect since *The Schools Act* makes no provision for private or independent schools.

6. Nova Scotia

"Private school" is defined in *The Education Act* regulations as

> a school established by an Act of the Legislature, or incorporated under the Societies Act or the Companies Act to provide educational services to persons over the age of six years and under the age of eighteen years.

E. School Year and Day

1. British Columbia

There is no regulation that specifies the school year and day for all independent schools. However, independent schools that receive grants only receive full grants (50, 35, or 10 percent as the case may be) for "qualifying students", who are defined as persons of school age who are enrolled for at least 135 school days between July 1 and May 15 in a school year. Schools receive partial grants for "partially qualifying students" in proportion to the number of days less than 135 during which the students are enrolled.

In addition, to meet their group classification requirements, the accredited schools have to offer curricula that will meet at least 80 percent of the provincial curriculum goals and allocate instructional time to English, social studies, mathematics, and science equal to at least 80 percent of what public schools are required to allocate. Consequently, in practice, in order to meet these requirements, accredited schools do generally operate for the same number of days as the public schools, namely 190 instructional days per year between July 1 and June 30.

2. Alberta

There are no regulations specifically requiring either registered or accredited private schools to operate a certain number of days each year. However, in accordance with provincial curriculum guides, accredited schools (along with public schools) are required to provide, for example, a minimum of 950 instructional hours per year at the junior high level and 1000 instructional hours per year at the senior high level. Collective agreements that specify maximum numbers of instructional hours per day combine with these provisions to require public schools to operate between 190 and 200 days per year. Accredited private schools could conceivably operate fewer days per year by increasing the number of instructional hours per day.

3. Manitoba

There are no regulations specifically requiring either funded or non-funded schools to operate a certain number of days each year. However, funded private schools that do not operate the number of days prescribed under the School Days, Hours and Vacations Regulation have their grants reduced accordingly. These regulations presently require 200 teaching days (which includes administration and in-service days) and 189 instructional days.

4. Ontario

Private schools are required in legislation to provide instruction between the hours of 9 a.m. and 4 p.m. on school days. "School days" are days within the school year.

While there are no regulations requiring *registered* schools to operate a certain number of days each year, criteria for *secondary level accreditation* generally require an "adequate number of instructional days". (Public secondary schools are required to have a minimum of 185 instructional days, which includes days for examinations.)

5. New Brunswick

On the "Independent Church Schools Annual Questionnaire", the schools report the daily hours of instruction, the number of instructional hours per week, and the number of days of operation between September 1 and June 30 of each year.

Public schools are required to operate 195 days per year, and students to be present a minimum of 182 days. Independent schools generally meet these minimum requirements. If an independent school did not, the Department would, first, remind the school of the public school requirements, and might, second, advise the parents that their children's school is not operating the same number of days as public schools.

6. Nova Scotia

There are no laws, regulations, or procedures in this respect, except for the following:

> Where a child is enrolled in a private school he shall attend the school during the time he is required, by the rules and regulations of the school, to attend it.

F. Facilities

1. British Columbia

Before issuing or renewing a certificate of classification for any group of schools, the inspector must be satisfied that

> the independent school facilities comply with the enactments of British Columbia and the municipality or regional district in which the facilities are located.

The three classifications of accredited schools and the one classification of registered schools which receives 10 percent funding must have facilities that "are adequate for instructional purposes." Adequacy is determined by the inspectors who visit the schools upon initial registration and subsequently by external evaluation committees in the case of accredited schools.

2. Alberta

At time of application, both registered and accredited schools must submit to the Minister "proof of compliance with municipal zoning and by-laws and all applicable municipal and provincial public health, safety and building standards requirements".

3. Manitoba

There are no regulations with respect to private school facilities. Private schools are expected to meet local building codes, and enforcement resides with local authorities. For purposes of funding, the liaison officer normally checks that private schools have facilities that will ensure that an equivalent standard of education is deemed to be attainable.

4. Ontario

There are no regulations with respect to private school facilities. However, private schools must indicate on their annual "Notice of Intention to Operate a Private School" form that they have obtained approval to use their premises as a school from the local building commissioner, fire chief, and medical health officer. In addition, criteria for secondary level accreditation generally require adequate educational facilities, including science laboratories and resource centres.

5. New Brunswick

On the "Independent Church Schools Annual Questionnaire", the schools attach a diagram of the floor plan of the school and indicate that the building has been approved for use as a school by both the District Medical Health Officer and the Provincial Fire Marshall.

6. Nova Scotia

While there are no education regulations concerning facilities, private schools have to conform to the general requirements of the Department of Health, the Fire Marshall, and municipal governments with respect to buildings housing numbers of people.

G. Access

There appears to be no educational legislation or regulation pertaining to who may or may not attend independent schools in any province. However, various provincial human rights' statutes generally apply to independent schools. For example, section 19 of the British Columbia *Human Rights Act*, entitled *Exemptions*, provides as follows:

> (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of interests and welfare of an identifiable group or class of persons characterized by a physical, or mental, disability or by common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.
>
> (2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

The only educational regulation remotely related to this issue appears to be a provision in the Alberta regulations requiring the application of the principles of fundamental justice with respect to the suspension of students from private schools. (See section L.2. below.)

H. Reports, Statements, and Records

1. British Columbia

An independent school authority shall submit to the inspector

(a) all reports and statements in the forms and at the times the inspector requires, and
(b) on the closure of an independent school, such records as the inspector may require.

For purposes of registration, all independent schools must complete at least three forms, the first providing information about the school, the second providing enrolment information on the students, and the third providing information about the teachers. Funded schools must also submit an annual audit.

2. Alberta

Annually, by October 22 of each year, the operator of each private school shall submit to the Minister,

(a) notice of intention to operate the school;
(b) the number of students enrolled in the school on September 30 of that year;
(c) as of September 30 of that year
  (i) the board of which the student is a resident student, but if the operator is unable to determine the board, the necessary information so that the Minister is able to determine the board, or
  (ii) if the student is not a resident student of any board in Alberta, a statement to that effect;
(d) the names and qualifications of the instructional staff.

With respect to student records,

(1) A private school operator shall keep records of student enrolment and attendance in a form acceptable to the Minister.

(2) A student record in a private school shall include

  (a) the student's name as registered under *The Vital Statistics Act* or if the student was born in a jurisdiction other than Alberta the student's name as registered in that jurisdiction, and any other names by which the student is known,
  (b) the name of the student's parent,
  (c) the student's birthplace,
  (d) the student's sex,
  (e) the addresses and telephone numbers of the student and of the student's

parent,
(f) the board of which the student is a resident student, but if the student is not a resident of any board in Alberta, a statement to that effect, and
(g) the citizenship of the student and, if the student is not a Canadian student, the type of visa held by the student and its expiry date.

(3) A student record in an accredited private school shall include the information in subsection (2) and

(a) the names of all schools attended by the student in Alberta and the dates of enrolment,
(b) a description of the student's instructional programs and record of achievement,
(c) the student's scores obtained on provincially administered tests and on tests used in the placement of the student,
(d) any health information that the parent or student wishes to have on the record,
(e) a record of the student's attendance if, in the opinion of the operator, the student's pattern of attendance is abnormal, and
(f) any other information the operator considers appropriate.

(4) The operator of a private school shall allow the contents of a student's record to be reviewed by

(a) the parent and a person who has the written permission of the parent, if the student is younger than 16 years of age,
(b) the parent, the student and a person who has the written permission of the parent and student, if the student is 16 years of age or older, or
(c) an individual, if that individual has access to the student under an order made under *The Divorce Act* (Canada)."

3. Manitoba

Private schools generally complete the annual September 30 statistical reports. While there is nothing to enforce this for non-funded schools, except possibly the school's deletion from the provincial registry, all the schools do co-operate. The Department has had little difficulty obtaining this information.

Children of compulsory school age are exempted from attending a public school, among other things, where "the child is in regular attendance at a private school, as defined in the Education Administration Act." Then

> where a child who is enrolled at or is attending a private school is absent from that school contrary to the provisions of this Act and the principal of the school is satisfied that the child is so absent, he shall immediately in writing report the matter together with the name and address of the child to the appropriate school attendance officer."

In effect, this means that private schools are to report absences to the local school division, since the school attendance officer is an employee of the local school division.

4. Ontario

Section 15(5) of *The Education Act* states that

> the principal, headmaster or person in charge of a private school shall make a return to the Ministry furnishing such statistical information regarding enrolment, staff, courses of study and other information as and when required by the Minister, and any such person who fails to make such return within sixty days of the request of the Minister is guilty of an offence and on conviction is liable to a fine of not more than $100.

5. New Brunswick

On the "Independent Church Schools Annual Questionnaire", the schools indicate whether cumulative student records are maintained, and whether a record of the student's achievement is available for the next school, if the student should leave his/her present school.

Schools complete the same annual September 30 statistical reports as the public schools complete.

6. Nova Scotia

Each year, the Department asks each school for basic information on the school and for enrolment data. An important incentive for providing this information is that this is required in order for the school to receive a textbook credit allocation. Even though the Department does not have a specified procedure to follow if a school refuses to supply the requested data, refusal to supply information has not been a serious problem.

I. Curriculum and Evaluation of Students

1. British Columbia

Under *The Independent School Act*, an "educational program" means

> an organized set of learning activities that is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy.

Before issuing or renewing a certificate of classification for any group of schools (1, 2, 3, 4, or 5), the inspector must be satisfied that no program is in existence or is proposed at the independent school that would, in theory or in practice, promote or foster doctrines of

- (i) racial or ethnic superiority or persecution,
- (ii) religious intolerance or persecution,
- (iii) social change through violent action, or
- (iv) sedition.

Department officials have clarified their interpretation of this provision as follows:

> Perhaps it is helpful to point out that the word "superiority" has reference only to race and ethnic origin, and not religion. Believers of any religion will consider their religion superior to others. That is in the nature of religion. Religious tolerance to us means that "others" should be allowed to be "wrong", and that no overt or covert pressure should be applied to "others" to conform to the "right" religion.
>
> We have had no difficulty with this particular provision. We have not received any evaluation reports in which non-compliance was an issue. Neither have there been any public complaints that have led to the laying of charges.

For group classifications 1, 2, and 4 (the accredited schools), the inspector must further be satisfied that

- (a) the independent school will establish an educational program for the current school year that complies with the instructional time and program requirements determined by the minister; and
- (b) the independent school has established an evaluation program that
  - (i) demonstrates student progress in achieving intellectual development, human and social development and career development, and
  - (ii) includes provincial assessment and examination programs.

This means that the accredited schools are expected to meet all the provincial curriculum goals and allocate at least 80 percent of their instructional time to the core subjects: English, social studies, mathematics, and science. In addition, in Grades 11 and 12, they must offer a program that will lead to graduation from Grade 12. Like students in public schools, all students in accredited schools must sit the government examinations in the Grade 12 examinable subjects during the government examination periods, which examinations count for 40 percent of their final mark.

British Columbia's Roman Catholic schools generally follow the provincial curriculum. The Christian Schools International (CSI) schools and the Seventh-day Adventist (SDA) schools have developed and use their own curricula in some subject areas which the Department has evaluated and determined to be equivalent to the public school curriculum. Checks for equivalency are made by evaluation teams on an ongoing basis. Checks for time requirements are made during inspection visits. (See K.1 below.)

All accredited schools are required to participate in the provincial assessment programs, which are designed to test the effectiveness of the curriculum in achieving the goals of the curriculum. This includes schools that are not specifically using the provincial curriculum.

Independent schools in group classifications 3 and 5 (the registered schools) are "not obligated to use curricula consistent with the provincial curriculum common goals".

2. Alberta

Section 25(1) of *The School Act* states that

> The Minister may by order do the following:
>
> (a) prescribe courses of study, including the amount of instructional time, and authorize education programs and instructional materials for use in schools;
> (b) approve any course, education program or instructional material that is submitted to the Minister by a board or another operator of a school for use in schools;
> (c) subject to the rights of a board to provide religious instruction, prohibit the use of a course, education program or instructional material in schools;
> (d) adopt or approve goals and standards applicable to the provision of education in Alberta.

Generally speaking, sections (c) and (d) refer to all Alberta schools, both public and private, section (a) or (b) refers to accredited private schools, and section (a) refers to public schools.

Among other things, a school is entitled to be *registered* as a private school if the Minister is satisfied that "the school will provide a program of studies that complies with any orders under section 25(1)(d)." This means that registered schools must utilize curricula that meet *The Goals of Basic Education for Alberta*. It is not clear whether the registered school or the regional office has the onus to determine this. ACE, Alpha Omega, and Mennonite curricula are generally considered to meet this requirement.

At time of application for registration, the school is required to submit "a proposed list of subjects to be taught and an outline of the major skills and knowledge areas to be learned."

Also at time of application for registration, the school is required to submit "the achievement tests to be used to evaluate the students."

Among other things, a school is entitled to be *accredited* if "the Minister approves the education program and any modification of it offered at the school". In approving curricula, the Department looks for equivalency of the curriculum to that of the public schools. As in British Columbia, the ACSI, CSI, and SDA accredited schools have developed their own curricula, parallel to the provincial curriculum, which are regarded as equivalent to the public education curriculum. Some schools with a supplemented ACE curriculum are also accredited.

Accredited schools must also "develop and maintain policies regarding the evaluation of students, teachers, programs and the school consistent with those of the Minister."

All students (in both public and private schools) who desire to graduate from high school with Grade 12 standing must write the provincial grade 12 examinations. For students in accredited schools, the provincial examinations account for 50 percent of their final mark. While students in registered schools are not eligible to write these examinations, mature students who are 19 years of age and who have been out of school for 8 consecutive months may challenge these examinations for 100 percent.

3. Manitoba

There are no regulations or requirements with respect to non-funded schools.

Accreditation of a school is implicit in funding. To be eligible to receive provincial grants, the Minister must be satisfied that

> the private school teaches a sufficient number of courses approved under *The Education Administration Act* to ensure that children enrolled in the private school receive an education of a standard equivalent to that received by children in public schools.

Funded schools are not required to utilize the identical courses utilized in public schools. Rather, the Department looks for equivalency of their curriculum to that of the public schools. Schools must agree to and seen to be striving to meet Manitoba's goals of learning and curriculum guidelines as outlined in the Department's Administrative Handbook. In his work with the schools' administration and staff, the liaison officer

> attempts to ascertain the attainment of such goals by visiting classes and forming an opinion based on perceived student achievement and demonstrated mastery of objectives as outlined in curriculum documents. Over the years, most independent schools have demonstrated that their students do well in post-secondary education.

4. Ontario

There are no regulations or requirements with respect to the *registration* or *listing* of a private school. The "Notice of Intention to Operate a Private School" form simply requires schools to indicate (1) whether or not they are following the Ontario curriculum, (2) whether the school offers courses at the Honour Graduation Level, and (3) whether the school's program is intended primarily to serve students with special educational needs.

However, criteria for *secondary level accreditation* appear to be the most restrictive of all provinces. Criteria require schools to conform to provincial curriculum guidelines, with only a minimal amount of room to substitute equivalent curricula in Grades 9 to 12, while schools must use the Ontario Academic Courses (the former Grade 13) in order for their students to receive diplomas acceptable for admission into university. In no circumstances are diploma credits allowed for studies in denominational religion.

5. New Brunswick

On the "Independent Church Schools Annual Questionnaire", the schools complete the following information with respect to curriculum and evaluation of students:

(1) A statement of instructional objectives;
(2) A description of the program that is being used by each grade in each of the major subject areas;
(3) The requirements for graduation, if Grade 12 is offered;
(4) How students are placed in the school's program;
(5) How students are promoted;
(6) A description of the student evaluation system;
(7) A description of the system of reporting student achievement to parents.

New Brunswick discontinued their system of province-wide Departmental examinations in 1972. In the absence of such examinations, a close relationship has developed between the universities and the public high schools. To determine whether the programs offered in church schools meet the admission requirements of a particular university, parents are advised in a letter accompanying the "Application for Exemption" form "to consult with their local independent school officials and the Admissions Officer of any university they might wish their children to attend."

The University of New Brunswick requires students in schools not following the provincial curriculum to write the American SATs. The rationale is that this is requirement for all American students and that such schools follow, for the most part, an American curriculum. Such students must have a minimum of 800 on the SAT, have a B average, be in the upper half of their class, and have a favourable letter of recommendation.

6. Nova Scotia

There are no laws, regulations, or procedures in this respect.

The province has no role in the acceptance by universities (or other post-secondary institutions) of private school graduates. There are no provincial graduation or entrance examinations and universities must make their own decisions based on their assessments of the schools and the individual students.

J. Teacher Qualifications

1. British Columbia

All teachers in school classifications 1 and 2, and 80 percent of the teachers in classification 4 (the three classifications of *accredited* schools) must be certified either by the College of Teachers or the Inspector of Independent Schools. In practice, more than 70 percent of teachers are certified by the College of Teachers, and the remainder by the Inspector.

In the context of *The Independent School Act*, a "certified teacher" means a teacher

(a) who holds a certificate of qualification under *The Teaching Profession Act*,
(b) who holds a certificate of qualification issued by the inspector under this Act or the former Act, or
(c) with respect to whom a letter of permission has been issued to an authority by the inspector.

The Independent School Act, as did the former 1977 Act, provides for the establishment of "independent school teacher certification committee". On the recommendation of the committee, the inspector may issue certification to a person or "issue a letter of permission to an authority permitting the authority to utilize the services of a person as a teacher for that authority for a specified time period". The independent school teacher certification committee recognizes teacher training in denominationally based colleges such as Canadian Union College (Seventh-day Adventist) in Lacombe, Alberta; and it recognizes academic education (e.g. a B.A. in history) not accompanied by professional education so long as the teachers are teaching their major subject. Such certifications or letters of permission are generally valid only for employment in a particular school or in a group of independent schools, such as the SDA schools.

The independent school teacher certification committee is appointed by the Minister and consists of representatives of the four membership groupings in the Federation of Independent School Associations (FISA) and a representative of the Seventh-day Adventists. They are hand-picked in consultation with the FISA and the particular groups involved.

Teachers in school classifications 3 and 5 (the two classifications of *registered* schools) are not required to be certified.

3. Alberta

At time of application to be *registered* as a private school, the school must submit to the Minister "the qualifications of the proposed instructional staff."

A private school is entitled to be *accredited* if the Minister is satisfied that "individuals whose qualifications are approved by the Minister are employed to teach at the school." At the present time, this means that the teachers must be provincially certified by the Teacher Certification Branch of the Department.

3. Manitoba

To be eligible to receive provincial funding, the Minister must be satisfied that "the teachers teaching the approved courses to children enrolled in the private school hold valid and subsisting teaching certificates issued under *The Education Administration Act*." However, provincial funding is given to each private school in proportion to the number of teachers in the private school that are certified. (See M.3. below.) If, say, only 80 percent of the teachers in the private school were certified, then the private school would receive a grant equal to only 80 percent of the full grant.

Hence, funded/accredited schools can and do sometimes employ, say, a teacher with a Ph.D. in history, to teach secondary level history, in which case the school balances its perceived worth of this teacher with the subsequent loss of funds. Thus the regulations provide a monetary incentive, but not an absolute requirement to employ mainly certified teachers.

4. Ontario

There are no regulations or requirements with respect to the *registration* or *listing* of a private school. The "Notice of Intention to Operate a Private School" form simply requires schools to indicate by sex the number of full-time and part-time teachers in the school.

However, criteria for *secondary level accreditation* suggest, but do not absolutely require, that the schools employ teachers with either professional or academic qualifications, that is, either a teaching certificate or a B.A. degree with a major in the subject of instruction.

In addition, with respect to teacher certification, section 15(8) of *The Education Act* provides that

> the Minister may, on the request of a person operating a private school or of a person in charge of a conservation authority or field centre, provide for the inspection of a teacher in such school or centre who requires the recommendation of a supervisory official for certification purposes.

5. New Brunswick

On the "Independent Church Schools Annual Questionnaire", the schools provide

> a list of all staff employed in the operation of the school, indicating assignment, full or part-time (if part-time, specify hours), qualifications, and experience.

6. Nova Scotia

There are no provincial requirements for private school teacher qualifications. However, private school teachers can receive provincial certification, both interim and permanent, on the same basis as public school teachers. That is, a private school teacher who desires a recommendation for permanent provincial certification may request (and will subsequently receive) a visit by a provincial inspector for this purpose.

K. Inspection, Evaluation, and Supervision of Schools

1. British Columbia

The Independent School Act provides that

> the inspector may authorize a person to inspect and evaluate independent schools, teachers, the operations of an authority, educational programs provided by independent schools and educational resource materials and school buildings and other buildings used in conjunction with the school.

The Independent School Act further provides for the establishment of "external evaluation committees" for the purposes "of issuing or renewing certificates of group classification and for the purposes of inspecting and evaluating independent schools."

That is, British Columbia distinguishes between inspections and evaluations of independent school programs. An inspection is a visit by one person, usually a department official, for one day or less, who would check, for instance, that a *registered* school had facilities that "comply with the enactments of British Columbia and the municipality or regional district in which the facilities are located", or that an *accredited* school met the time requirements for core subjects.

An evaluation involves a team of several members, often under contract, that might visit an *accredited* school for two or three days, evaluating the entire academic program of the school in order to assess its equivalency to that of the public schools.

The Department of Education lays down province-wide criteria for the inspection and evaluation of independent schools. The three classifications of accredited independent schools will "undergo an initial external evaluation and an external evaluation thereafter at least once every four years and be inspected at least once every 2 years."

The two classifications of registered independent schools undergo an initial inspection upon registration and subsequent inspections at least every 2 years.

2. Alberta

Alberta makes the same distinction as British Columbia between inspection and evaluation.

The regional offices of the Department are responsible for inspections and evaluations of private schools. The regional offices inspect each private school (whether accredited or registered) at least once a year; they generally evaluate the accredited schools once every 5 years.

3. Manitoba

The Department's liaison officer for private schools visits and inspects schools on a regular basis. There are no legal or regulatory requirements for the regularity or timing of visits. With only one part-time officer and some eighty schools, it is obvious that he/she does not visit each school every year. In order of priority, his/her three tasks are (1) to visit and inspect schools that apply for funding for the first time; (2) to continue to visit and inspect schools that have been funded for some time; and (3) to visit non-funded schools in order to become familiar with their particular educational programs.

When visiting schools, the liaison officer looks for factors which indicate a continuingly positive learning climate, such as

(a) Teacher competence/preparedness/analysis/prescription/monitoring/corrective/evaluation skills.

(b) Student learning patterns:
  - Are they "on task"?
  - Are they following productive work patterns?
  - Is there efficient use of time/resources?
  - Do they have access to resources/staff?
  - What quality of work do they produce?

(c) Student-teacher-community relationships:
  - Communication patterns;
  - Trust/acceptance/support mechanisms;
  - Community involvement/satisfaction barometer.

(d) Educational/instructional leadership modes

(e) Curriculum and other resource materials used in an attempt to reach for a satisfactory "equivalency" standard to that of the public school system.

4. Ontario

The regional offices of the Ministry of Education are responsible for two kinds of inspections. along lines similar to British Columbia and Alberta: (1) the initial inspection upon receipt of a notice of intention to operate a private school; and (2) a subsequent inspection in respect of the standard of instruction for high school diploma purposes.

Section 15(6) of *The Education Act* states that

> the Minister may direct one or more supervisory officials to inspect a private school, in which case each such supervisory officer may enter the school at all reasonable hours and conduct an inspection of the school and any records or documents relating thereto, and every person who prevents or obstructs or attempts to prevent or obstruct any such

> entry or inspection is guilty of an offence and on conviction is liable to a fine of not more than $200.

Section 15(7) of *The Education Act* states that

> the Minister may, on the request of any person operating a private school, provide for inspection of the school in respect of the standard of instruction in the subjects leading to the Ontario secondary school diploma, the secondary school graduation diploma, and to the secondary school honour graduation diploma, and may determine and charge a fee for such inspection.

5. New Brunswick

A Department official -- generally a consultant in one of the various branches of the English Educational Services division -- visits each independent school annually in order to determine that efficient instruction is taking place in each independent school. The official normally visits the independent school in connection with other work that he/she has to do in the vicinity of the independent school.

6. Nova Scotia

Departmental inspectors inspect both public and private schools. An inspector will visit a private school when it is first established, but most subsequent visits are made upon request. Most such requests are made when a private school teacher wants a recommendation for permanent provincial certification.

In determining whether the private school is providing instruction equivalent to public schools, the inspectors refer to the list of programs that must be offered by public schools, as prescribed in *The Education Act* regulations. Beyond this, the Department has not developed any other formal criteria for inspectors to use when visiting private schools.

L. Settlement of Disputes

1. British Columbia

With respect to group classification,

> where the inspector refuses to issue or renew a certificate of group classification to or cancels the certificate of group classification of an independent school, the authority operating the school may appeal, within 60 calendar days, the inspector's decision to the minister, whose decision is final.

With respect to teacher certification,

> where the inspector has refused to issue certification to a teacher or has suspended or revoked a teacher's certification, the teacher may appeal, within 60 calendar days, to the minister whose decision is final.

2. Alberta

With respect to the discipline and suspension of students from private schools, the operator of a private school shall

> (a) makes rules for the discipline of students and for the suspension and expulsion of students that incorporate the principles of fundamental justice, and
> (b) provide copies of those rules to the students and their parents.

3. Manitoba

The Department's liaison officer for private schools makes recommendations with respect to provincial funding for particular private schools. These recommendations can be challenged, and changes or adjustments are possible if further investigation warrants such action. There are, however, no procedural guidelines for such revisions.

4. Ontario

Section 20(2) of *The Education Act* provides that a child of compulsory attendance age is excused from attendance at a public school if "he is receiving satisfactory instruction at home or elsewhere." The term "elsewhere" embraces private schools.

Section 23(2) provides that

> where the parent or guardian of a child considers that the child is excused from attendance at school under subsection 20(2), and the appropriate school attendance counsellor or the Provincial School Attendance Counsellor is of the opinion that the child should not be excused from attendance, the Provincial School Attendance Counsellor shall direct that an inquiry be made as to the validity of the reason or excuse for non-attendance and the other relevant circumstances, and for such purpose shall appoint one or more persons who are not employees of the board that operates the school that the child has the right to attend to conduct a hearing and to report to him the result of the inquiry and may, by order in writing signed by him, direct that the child,
>
> (a) be excused from attendance at school; or
> (b) attend school,

> and a copy of the order shall be delivered to the board and to the parent or guardian of the child.

Such orders are appealable to the judicial system. In *Lambton County Board of Education* v. *Beauchamp* (1979), the court determined that the onus of proof that instruction at home or elsewhere was unsatisfactory rested with the educational authorities, that is, with the local school or provincial attendance counsellor. Subsequent to this decision, the Provincial School Attendance Counsellor issued an advisory memorandum to school boards which outlined procedures that could be followed for determining satisfactory instruction.

5. New Brunswick

There are no laws, regulations, or procedures in this respect.

6. Nova Scotia

There are no laws, regulations, or procedures in this respect.

M. Funding

1. British Columbia

For accredited schools whose per pupil costs are the same as or less than those of the public school district in which the school is located (group classification 1), the per pupil grant equals 50 percent of public school per pupil costs.

For accredited schools whose per pupil costs are greater than those of the public school district in which the school is located (group classification 2), the grant equals 35 percent of public school per pupil costs.

For accredited schools for which more than 1/2 of the students are foreign students, the grant equals zero.

For registered schools (group classification 3), funding equals 10 percent of public school per pupil costs.

For registered schools (group classification 5), the grant equals zero. The essential difference between these two classifications is that schools in group 5 either are in their first year of operation (since funding is only available in the second year), or choose of their own volition on a matter of principle not to receive any funding.

2. Alberta

Registered schools are not funded. Accredited schools are funded at 50 percent of public school per pupil costs. Some accredited schools are funded from other sources like the federal Department of Indian Affairs.

3. Manitoba

The Minister may make grants to private schools in respect to instruction offered to children enrolled in private schools if the Minister is satisfied that:

> (a) the private school teaches a sufficient number of courses approved under *The Education Administration Act* to ensure that children enrolled in the private school receive an education of a standard equivalent to that received by children in public schools;
>
> (b) the teachers teaching the approved courses to children enrolled in the private school hold valid and subsisting teaching certificates issued under *The Education Administration Act*;
>
> (c) the Department of Education has approved the core curriculum of the school;
>
> (d) the private school has a legally incorporated Board of Directors;
>
> (d) the private school has an elected advisory board that
>
> > (i) includes at least three persons who are parents or guardians of children enrolled in the private school;
> >
> > (ii) reports on the private school during the school year, and not less often than once in each school term, to the parents or guardians of students enrolled in the private school;
>
> (f) the private school has been in operation for a period of three years prior to receiving a grant under this subsection and has compiled with clauses (a) to (e) for each of those years; and
>
> (g) the private school is in compliance with such other requirements as may be prescribed by regulation.

The grant is presently (1990-91) equal to 54.5 percent of public school per pupil costs for each full-time equivalent pupil, and will rise by an additional 4.5 percent per year until it reaches 80 percent in 1996-97.

However, a "full time equivalent pupil" means "the number of pupils multiplied by the percentage of the instructional day that the pupils are provided with public school instruction by a certified teacher in a public school." In other words, if 80 percent of the teachers in the private school were certified, then the private school would receive a per pupil grant equal to 80 percent of the full grant.

The Department of Education also provides (1) an additional grant of $40 per pupil per year for print/non-print materials, and (2) additional grants to private schools for "low incidence pupils", depending on the degree of mental or physical handicap, or learning disability, in essentially the same manner that it provides grants to public schools.

4. Ontario

There is no provision for funding of any private schools in Ontario.

5. New Brunswick

There is no provision for funding of any independent schools in New Brunswick.

6. Nova Scotia

Private schools are given a textbook credit with the provincial book bureau on the same basis as public schools. However, this is only of value to private schools to the extent to which they utilize the provincial curriculum in their schools.

N. Interface Between Public and Independent Schools

1. British Columbia

If there is space available, public schools generally make room for independent school students on public school buses. Public schools are only indirectly reimbursed for such services through the workings of the grant formula.

In theory, independent schools have access to clinician services of the Department and of school boards, but in practice have little or no access because of the excess demand for such clinician services.

2. Alberta

Many private schools operate their own bus services. Otherwise, private schools can enter into general understandings or contractual arrangements in respect of the transportation of private school students on public school buses. Provincial grants to public schools do not reflect the transportation of private school students on public school buses.

Private schools have access to consultants employed in the regional offices of the Department, but not to personnel employed by public school boards, except by mutually agreed-upon arrangements.

3. Manitoba

The Public Schools Act specifically provides that a school board may enter into agreements with a private school (either funded or non-funded) "to provide under the supervision and control of the school board to children enrolled in the private school transportation from points on the regular public school bus route operated by the school board on the same route."

The Act further provides that a school board may enter into an annual agreement with a private school "respecting the use of the facilities and resources of the school division or school district, other than transportation facilities and resources, by or for the benefit of children enrolled in the private school while attending a public school operated by a school division or school district." Typical shared services include gymnasium, home economics and industrial arts facilities, and clinicians.

Provincial grants made or support provided to a school division include amounts in respect of such above agreements, in particular, for transportation and clinician services.

Private schools also have some access to clinician services provided directly by the Department of Education.

Appendix 16

Presentation on Behalf of the Saskatchewan School Trustees Association

Ann Stewardson

November 28, 1989

A. Goals and Philosophy

The Saskatchewan School Trustees (SSTA) is a voluntary association of boards of education in Saskatchewan. The SSTA meets annually in convention to raise and discuss the issues of concern facing education from a trustee perspective. An executive is also elected to represent the interests of parents and children in education throughout the year. The Association believes that education as a public enterprise must be committed to the creation and improvement of opportunities for the development of today's students in order to enrich our local, national and global communities through the creation of an educated, creative, informed, thoughtful, compassionate and motivated next generation.

This goal is achieved through a combination of highly qualified and motivated teachers, a comprehensive, dynamic and evolving curriculum and elected boards of education who are engaged in an ongoing dialogue with the community.

At the same time, those boards are regularly accountable to that community for the leadership provided and for the local autonomy reflected through an unfettered access to a predictable local revenue source.

The creation of Saskatchewan's public school system can be traced to the first ordinances passed by the territorial government after its creation in 1884. Fifty-nine school districts were established before the end of 1885. In excess of 5300 school districts would be formed during the next 60 years.

In 1905, a provincial forum for trustees was created, but the SSTA as it is was conceived of today was not organized until 1915. After the First World War, the Catholic School Trustees' Association of Saskatchewan was formed as a result of a separation from the SSTA.

The structure of the SSTA remained stable until *The Larger School Units Act* came into force in 1944.

The two associations maintained fraternal relations with regular discussions of amalgamation beginning in 1931 and concluding with amalgamation at the 1951 convention.

The next significant change in the SSTA occurred in 1989.

The SSTA provides a range of services to member boards such as labour relations and legal assistance, communications, computer services and insurance programs as well as lobbying and public relations. The Association has a staff of twenty and an annual expenditures of 3.2 million dollars in 1989.

In summary, boards of education have existed for 105 years in Saskatchewan.

A forum for boards of education has existed for 84 years and the SSTA has existed for 74 years.

The Association has developed its services, activities and positions on educational issues in concert with the views of its membership.

B. Membership and Operation

The SSTA is made up on a voluntary basis of every board of education in Saskatchewan. In statistical terms this means:

115 boards of education
750 boards of education members
425 boards of trustees
2000+ board of trustee members
A growing number of local school advisory committee members

943 schools
12,629 teachers
5,000 other employees
206,000+ students

$410+ million in local property taxes
$906 million total budget

The SSTA holds an annual meeting of trustees in November each year. The 1989 convention had in excess of 800 delegates.

The convention considered approximately four dozen resolutions on topics from education legislation, curriculum and finances, to a trustee's code of ethics and organizational structure.

The convention and regional branch meetings elect an executive of 14 members. The past president is part of the executive during the first year of a new president's term.

The Association has a staff complement of twenty senior and support staff.

The SSTA serves its membership through a broad range of organizational functions:

Leadership

The Association is committed to providing educational leadership for its members and, on their behalf, for the educational community,

Advocacy

The views and concerns of school boards are voiced by the SSTA with the provincial government, other local governments and with our educational partners.

Membership Development

The Association provides a broad range of trustee and board development opportunities varying from schools for new trustees to seminars, as well as individual board development and evaluation seminars and workshops.

Communications

A large responsibility of the SSTA is to provide communications among the membership. Publication of *The Trustee Newsletter* and *Update* are central to this role, as is a growing responsibility for the development of board of education public communication programs.

Research and Development

The SSTA and its members have funded and operated a centre for research and development since 1970. The SSTA is a strong advocate of educational research and is committed to improving education through educational research.

Monitoring

The SSTA informs its membership about educational developments in the province and elsewhere. A special responsibility for monitoring legislation and financial developments is held by the Association.

Direct Service

Direct services are provided to member boards in a broad range of areas: legal, bargaining, computers, insurance, educational and communication consulting services are the most heavily drawn upon services.

C. The Association View of Independent Schools

The Saskatchewan School Trustees' Association is an advocate of public education.

The SSTA believes that children and Saskatchewan people are best served by a public education system which draws on the public at large for guidance and for its financial support.

Parents play an essential and central role in public education as they shape their own children's education within the broad guidelines publicly determined by both the provincial and local levels of government.

The Association believes that the following applies in the context of the work of this committee:

First, there must be no extension of public funding for independent schools beyond that which is now provided for the eight independent secondary schools.

Second, the Association believes that to be registered an independent school must follow the Saskatchewan curriculum. We accept that a measure of latitude must be provided for curriculum interpretation by independent schools but we believe that there is sufficient room within the provincial curriculum to make the necessary accommodation. As well, we are prepared to establish curriculum adherence as a goal and to accept a two year plan to comply as an interim registration possibility.

Third, the SSTA believes that the teacher in an independent school must be certified to teach in Saskatchewan. There is, again, sufficient breadth in certification requirements to establish certification as a goal providing for interim registration.

It must be reiterated that the Association is prepared to be flexible and accommodating in respect to the work of this committee. However, we are thoroughly inflexible in the three matters of: extension of funding, the provincial curriculum, and certification of teachers.

Appendix 17

Presentation on Behalf of the Saskatchewan Association of Private High Schools

Donald A. King

November 28, 1989

A. Goals and Philosophy

1. The SAPHS began in an informal manner in the 1960s with heads of the various private high schools getting in touch with each other. In 1971, 13 private high schools (about 20 people) met at Luther College.

2. Since that time a more formal organization has existed around three main goals:

   (i) To serve young people - holistic approach.
   (ii) To support one another.
   (iii) To make representation to the Department of Education on matters relevant to independent schools in Saskatchewan.

3. The members schools of our association have been part of Saskatchewan education for most of this century. They were founded by pioneers of various religious convictions. These school founders wanted institutions that provided quality education with an added spiritual dimension. They wished to see young people educated to serve in leadership roles in the church and in society.

4. Today the aims are the same at our schools but they have broadened somewhat. We still feel there is a need for independent schools in the educational life of Saskatchewan.

B. Membership and Operation

1. Members

Of the original 13 schools interested in SAPHS, some moved into university status only, others made arrangements to become part of the public or separate systems in their areas, and another relocated in a neighbouring province.

Today there are 8 member schools in SAPHS:

- (i) Caronport High School
- (ii) College Mathieu (Gravelbourg)
- (iii) Luther College (Regina)
- (iv) Lutheran Collegiate Bible Institute (Outlook)
- (v) Notre Dame College (Wilcox)
- (vi) Rivier Academy (Prince Albert)
- (vii) Rosthern Junior College
- (viii) St. Angela's Academy (Prelate)

2. **Meetings** (Two a year):

   - (i) *Fall* -- at the campus of a member school.
   - (ii) *Spring* -- at Luther College with Department of Education representatives present.

3. **Elected Executive** -- President, Secretary-treasurer, 2 members at large.

4. **Membership Fee** -- $ 50.00.

5. **FISC** -- We have membership in the Federation of Independent Schools in Canada.

C. Role in Saskatchewan Education

1. Our schools continue to offer dedicated service to all those who choose to attend. We have no admission restrictions. We serve not only the immediate participants and supporting churches, but also the people of Saskatchewan at large. We believe that we provide a valuable educational alternative for the students of Saskatchewan.

2. At no time has our reason for being included elements which severely contrast us to, or motivate harmful competition with, the public schools of Saskatchewan.

3. Independent schools exist in Saskatchewan because of a basic freedom promoted and enjoyed in a genuine democracy. This is the freedom for parents to choose the type of education they want for their children. This freedom has led to the establishment of independent schools across Canada and around the world.

4. **Areas of Service.** There are several areas of service provided by our schools that can be identified at this time:

   (i) *Spiritual*

   There is a spiritual dimension to education that most educators recognize - e.g. *Directions* -- but often find difficult to implement. It is here that private schools augment the public schools.

(ii) *Academic*

Our schools add to the mix of educational opportunities available to students. We have introduced some new academic programs to the province; e.g. College Mathieu -- French; Luther College -- International Baccalaureate Curriculum; Religious Education -- in co-operation with the Separate System; Fine Arts emphasis; University programs -- Luther and Notre Dame.

(iii) *Out-of-Province*

As residential schools, we serve people from norther communities; Canadians living abroad; those with poor educational opportunities in their communities; native students; and foreign students.

(iv) *Social Services*

Although the rehabilitation of "problem students" is not our primary function, a number of these young people do get a fresh start at our schools.

(v) *Economic Considerations*

Besides educational services, there are basic economic services provided by our schools:

(a) Budgets that run into the millions.
(b) Money is brought into the province by out-of-province students.
(c) Employment is provided for a number of people.
(d) Our alumni are good will ambassadors around the world.

(vi) *Regulations*

We follow all regulations drawn up by the Department of Education.

(a) We follow the Saskatchewan curriculum and texts.
(b) We have certified teachers.
(c) We adhere to Department of Education regulations.
(d) Our teachers are members of STF.
(e) We are inspected regularly by a superintendent.
(f) We provide all requested statistical information.

D. Public High Schools

1. As independent schools we believe in a strong public school system. Our schools began 75-80 years ago when good public school systems were not always available. We started not as a complaint or in competition to the public schools, but as a valuable educational alternative. We do not see ourselves as better than public schools but as a complement, an alternative.

2. Areas of Co-operation

We have various areas of co-operation with the public and separate systems:

- (i) Sharing of superintendents.
- (ii) Membership in professional organizations.
- (iii) Participation in athletic leagues.
- (iv) Involvement in professional development workshops.

3. Community Programs

Our schools also offer a variety of programs to the general public.

E. Conclusion

We are happy to be a part of the educational mosaic of Saskatchewan.

Appendix 18

Presentation on Behalf of The Saskatchewan Association of Independent Church Schools

Marge Bailey

December 12, 1989

A. Goals and Philosophy

The Saskatchewan Association of Independent Church Schools (SAICS) is a voluntary association of evangelical churches in the province of Saskatchewan that operate a Christian day-school as an integral part of their church ministry. Among other things, the aims and objectives of SAICS are to defend the rights and freedoms of parents who wish to enrol their children in a church-school; to communicate with government and civil agencies on issues of common concern to individual church schools; and to promote the acceptance of students who are educated in church schools.

SAICS schools are not in competition with the public school system, but are complementary to the public school system, fulfilling a specific need for our parents and children. All member church-schools believe that in order for an educational program to be academically sound and instructionally effective, it must be founded upon Christian principles. SAICS schools are meeting the needs of parents who desire for their children this explicit education -- not just a spiritual dimension, like Christian ethics -- but a spiritual foundation to the children's entire educational experience. Like the Seventh-day Adventist schools, SAICS schools do not believe that religion is simply another class (that can be taught in the 20 percent of the time allocated to locally-determined options), but rather that religious or philosophical beliefs, whether explicit or implicit, form the foundation for everything which is taught. We believe that one cannot separate the teaching of morals and ethics from the teaching of academics.

SAICS parents believe that children belong to God and that we should educate our children in accordance with the Word of God (Isaiah 53:13). The church-school is much more than a Bible school because it combines the development of intellectual skills, a broadening of the child's horizons and knowledge with Christian attitudes, habits, and character sufficient to keep a good balance in intellectual pursuits.

The preliminary goal of SAICS schools is to train students equipped for Christian leadership. This major goal is divided into learning objectives to develop each child spiritually, mentally, socially and physically. Some examples of these objectives are listed. The student

(1) has a saving knowledge of Jesus Christ.

(2) achieves a higher level of Christian maturity, a deeper commitment and becomes a more effective witness for the Lord.

(3) recognizes his individuality and responds properly to himself and others.

(4) develops self-confidence, individual God-given talents and abilities in creativity, goal setting, analysis, communications, academics and the principles of success.

(5) becomes self-disciplined, consistent, appreciative, responsible and thorough in attitude, character and actions.

(6) communicates clearly, logically and effectively through reading, writing, speaking and listening.

(7) develops a proper respect and honour for those in authority.

(8) develops his capabilities and maximum competence in the fundamental skills, understandings and appreciations.

(9) thinks creatively and constructively in intellectual and practical problems.

(10) develops and maintains good physical and mental health.

B. History

Some individual church-schools have existed in the province since 1974. As many Christian parents perceived a gap between the education they wanted for their children and what the teachers taught, more church-schools began to open. The need for communication with government on educational issues became apparent. SAICS was formed in June, 198, after a group of concerned parents met with the Minister of Education, Gordon Currie, in the previous April. He advised these parents to formally organize an Association. Subsequent meetings with the government lead to the General Understanding of August 1984, under which our church-schools have operated.

SAICS was incorporated in 1988 under *The Non-Profit Corporations Act*.

Like the Saskatchewan Association of Private High Schools, SAICS is a member of FISC (Federation of Independent Schools in Canada).

C. Membership and Operation

SAICS has an active membership of 18 evangelical churches operating church-schools. Members must have the same aims and objectives; may use curriculum other than Accelerated Christian Education but must be a church-school, not a society school. Associate and affiliate memberships are open to parents and other churches that are sympathetic with the aims and objectives of SAICS and uphold the SAICS statement of faith.

One annual meeting of the membership is held usually in January of each calendar year and subsequent meetings are held as called by the President. The Directors of the Association, elected by the membership, are the President, Secretary-Treasurer and one Director for every 25 class "A" members or part thereof. (Each church has 2 Class "A" voting members. Therefore, we now have 2 Directors.)

SAICS is not an accreditation body. There is no authority relationship between SAICS, A.C.E. and the member churches. All present members of SAICS utilize the Accelerated Christian Education curriculum in their church-schools. A.C.E. is a publisher with a contractual relationship with the churches, not a franchise relationship. A.C.E. is an evangelical academic curriculum designed for churches. It is a self-paced, individualized, competency-based learning system the same as the program at Woodland Campus of SIAST in Prince Albert and some programs at Wascana Campus. The advantages of a self-paced, individualized, competency learning system are:

(1) greater flexibility for the student;

(2) maximum use of instructional resources;

(3) greater cost efficiency per student;

(4) greater efficiency in the use of facilities and equipment;

(5) greater accountability for both instructors and institutions.

A.C.E. is, in some ways, consistent with the public system document *Directions*:

(1) A.C.E. is based on the concept of continuous progress, like the Division System introduced into Saskatchewan in the 1960s. *Directions* reported that

> during public meetings, the question was frequently asked, "What has happened to continuous progress?" Teachers commented that continuous progress is good in theory but that in practice it is not working. (p. 19)

In our schools, with our particular curriculum, we have made the concept of continuous progress work.

(2) A.C.E. is an individualized program. *Directions* has many references to individualizing instruction more in the public schools, such as

> Agreement, then, on the importance of attending to the learner's individual needs appeared to be present, as was a belief in the philosophy of continuous progress. The problem remains that our system has not gone far enough in facilitating that individualization. (p. 19)

Our schools do facilitate such individualization.

(3) *Directions* recommended (Action Recommendation #3) that

> a variety of ways of delivering the Core curriculum and elective courses be made available to Saskatchewan schools.
>
> Alternative delivery mechanisms such as correspondence courses, modular course structures, and shared resources should be expanded.
>
> Other program delivery mechanisms that involve the use of new technology should be developed.

A.C.E. has a modular course structure.

SAICS member church-schools have chosen A.C.E. because it is explicitly theistic and individualized and because it meets our educational objectives of building Christian character and high academic standards.

With a self-paced, competency-based learning system, time is no longer the constant, but learning is the constant. Students progress in different subjects at different rates in accordance with their ability in these subjects. While SAICS schools can assure the Department that certain material is covered, SAICS would have difficulty keeping strictly to the time guidelines laid out in the Core Curriculum document.

The A.C.E. curriculum has been developed primarily in the United States but it is wrong to think of it as an American curriculum. Rather it is a Christian curriculum and Christianity, being a universal religion, transcends national boundaries. The A.C.E. program is now used in over 6,000 schools in 92 countries of the world. The Canadian office for A.C.E. is in Portage la Prairie, Manitoba.

Church-schools utilizing the A.C.E. curriculum may partake of the extra services A.C.E. provides. One service A.C.E. supplies is audio-interactive and video-interactive computerized education. As well, teacher in-service, teacher conventions, administrator's conferences, school visits and student convention programs are all held annually across Canada. The first and second place winners in the regional student conventions compete in the A.C.E. International Student Leadership Convention. Each year about 4,000 students from around the world compete in 129 events - in music, speech, art, athletics, academics, and various skills, as well as numerous aspects of the ministry.

D. Role In Saskatchewan Education

Protestant parents had two choices: (1) either attempt to reintroduce Christianity and the Bible back into the public schools; or (2) establish their own schools.

SAICS members chose to establish their own schools as the less socially divisive and the more Scriptural solution. By their own admission, public schools cannot fill the spiritual vacuum needed by our parents and children in education. The roles SAICS has, then, is to provide a viable alternative to parents who hold to a Christian philosophy and want Christian education for their children. We are not intolerant of other faiths. We ask that others not be intolerant of us. Canadian society is a mosaic. We accept diversity or we would not already have an existing separate school system. This diversity enriches our society and creates social harmony. Therefore, we see SAICS schools as complementary to the role of the public schools in Saskatchewan.

SAICS is the voice of the church-schools in Saskatchewan. We have had ongoing meetings with the government and the Department of Education in our role as liaison between the media, school boards, municipalities, government and the members of church schools. SAICS participated in a Rally in 1987 sponsored by the Saskatchewan Association for Alternatives in Education. Two testing programs have been conducted to evaluate the academic progress of students in our church schools (1985, 1987) by an independent educational psychologist at the University of Saskatchewan.

E. Agree and Disagree With Public Schools

We agree that education is a public good with benefits to both the individual and society. Education is an investment in the future. Church-schools accept the role of the state to protect the rights of Canadian children in education. We agree with the compulsory education, but not education in a compulsory way. The government must provide a legal framework in which schools can operate and must lay down education standards. There are many ways to achieve these roles. The government has chosen public schools in North America. We have no problem with this as long as they are not a monopoly as this is inconsistent with Western democratic society.

The three public school groups have stated their position, or at least their beliefs, with respect to funding and regulations concerning curriculum and teachers. Since they have done so, I would like to state the SAICS perspective on these issues – not our position as such, but our *perspective*.

Funding and Regulation Go Hand in Hand

At the present time, independent elementary schools operate in practice with a lot of regulatory leeway. Except for the fact that some schools were taxed and that some families have been charged with truancy, we have been basically been left alone. Ray Allison or Les Keith visited all our schools when they were superintendents of private schools and some local directors have done so, too. But since 1984, no Director of Education has initiated any proceedings against any of our schools.

So long as we enjoy relative regulatory leeway, we believe that it would be inequitable (that is, unfair to the public schools) for the government to fund our schools to the same extent as public schools. For this regulatory leeway enables us to be flexible, and such flexibility enables us to keep our costs lower. If we were to receive, say, $3,600 per pupil from the government while enjoying continuing regulatory leeway, we could run Cadillac programs that would attract increasing numbers of students from the public schools. But, quite frankly, I would fear for the quality of some of these programs – that they might be motivated more by a desire to attract government funding than by a genuine commitment to quality education.

On the other hand, it would also be inequitable (that is, unfair to independent schools) to regulate independent schools just like public schools without providing equivalent funding. Funding and regulation go hand in hand. Regulation does increase costs. Without any government funding, regulatory leeway – including leeway with respect to the choice of curricula and the hiring of teachers – is vital to the survival of most of our schools, for, once again, this regulatory leeway enables us to be flexible. And flexibility is a crucial ingredient in keeping the cost of schools as low as possible while maintaining the academic integrity of our programs.

The essential ingredient in what makes our schools work is what Erickson, in his study of independent schools in British Columbia, refers to as *Gemeinschaft*. We have to agree with Erickson, based on our own experience, that there exist different models of the structure and operation of effective schools, and that public policies such as funding and regulation in turn affect the structure and operation that schools adopt.

As Erickson points out, liberal public funding is essential to the Professionalism model of school operation since "people will not invest in long periods of training unless they expect to be paid well, and since sense of professionalism is linked to good salaries and working conditions". Without liberal public funding, it is inequitable and unfair to impose this model of operation on absolutely all independent schools. Without liberal public funding, The Professionalism model is not a viable economic model of all independent schools.

This does not mean that there are no professionals working in our schools or that such teachers do not view themselves as professionals, but rather that their professionalism is not the essential ingredient that makes independent schools work.

To repeat our perspective, funding and regulation go hand in hand. It is not fair and equitable to regulate an independent school excessively without also providing funding. This, in our view, is a reasonable interpretation of section 15 of *The Charter*. Full funding for independent schools with continued regulatory leeway would not represent equality; it would give independent schools a totally unfair advantage. On the other hand, no funding plus restrictive regulation with respect to the two ingredients that, above all, determine the philosophy and the character of a school, namely curriculum and teachers, do not represent equality either. It makes it impossible for some schools, which are in fact doing an effective job of educating children, to exist.

In our view, it is inconsistent to say, on the one hand, that independent schools have a right to exist and that parents have a right to enrol their children in such schools, but on the other hand, to insist upon no funding, provincial curriculum, and provincial certification. In our view, this position is also inconsistent with the political compromise struck by the Minister in June 1988 and reflected in the policy framework for this Board.

Independent schools must retain their liberty to be different, including effective choices with respect to the curriculum and teachers, the two key ingredients that determine the character, philosophy, and culture of the school. We do not presently regard our schools as perfect or not in need of improvement. We desire an opportunity to improve our schools, where needed, within the context of what we are trying to do.

We agree with Howard McConnell that a generally accepted standard of education is a pluralistic standard, permitting schools of different philosophies to achieve similar academic goals by different means. Without government funding, we require the freedom to do this by means of a model like the *Gemeinschaft* model.

Perhaps our greatest frustration has been that public institutions (the Department of Education, the public schools, and the post-secondary institutions) presently have no mechanism to evaluate quality education that is taking place outside the public school system. This is not really anybody's fault; the present evaluation systems in place for K-12 education were not designed to accommodate independent schools for the simple reason that few independent schools existed when they were designed. But now that more independent schools exist, it strikes us as another one of the major tasks of the Advisory Board to make recommendations in this area - that is, the evaluation of the education being achieved by students in independent schools.

Appendix 19

Presentation on Behalf of the Seventh-day Adventist Schools

Myron Wareham

November 28, 1989

A. Philosophy

The Seventh-day Adventist Church desires through all its education programs to help prepare the youth for effective citizenship on this earth and for rewarding citizenship in the new earth.

The education program of the church gives primary emphasis to character building and the spiritual foundation of the life of its children and youth. Moreover, its makes abundant provision for the acquisition and interpretation of that which is appropriate from the store of secular knowledge and skills for mental, social, vocational and physical development.

The Seventh-day Adventist Church's philosophy of education is best expressed in the words of one of its founders, Mrs. Ellen G. White:

> True education means more than the perusal of a certain course of study. It means more than a preparation for the life that now is. It has to do with the whole being, and with the whole period of existence possible to man. It is the harmonious development of the physical, the mental, and the spiritual powers. It prepares the student for the joy of service in this world, and for the higher joy of wider service in the world to come.
>
> Education is but the preparation of the physical, intellectual and moral powers for the best performance of all the duties of life. We are called to the service of God and our fellowmen; and to fit us for this service should be the object of our education.

B. Goals

1. **Spiritual:** The child

    a. Studies the Bible and the Spirit of Prophecy in the spirit of the learner and reads them for personal communion, guidance and information.

    b. Chooses Christ as his personal Saviour and accepts as his own the principles of Christian living as taught by the Seventh-day Adventist Church.

    c. Enjoys a deeper, richer Christian experience and has a better understanding of God and the plan of salvation.

2. **Social:** The child

   a. Enjoys associations with others and co-operates harmoniously with them in common enterprise.

   b. Considers opinions of others, chooses what is right and stands for principle.

   c. Understands other people, their needs, and ways of life. Discovers that mutual sharing of responsibilities and ideas brings satisfaction.

   d. Dedicates his life to service for Christ.

3. **Physical:** The child

   a. Understands his own body and how to care for it.

   b. Develops and maintains good physical and mental health.

   c. Co-operates in community plans for more healthful living.

4. **Mental:** The child

   a. Thinks effectively and constructively in dealing with both intellectual and practical problems.

   b. Develops his capabilities and reaches the highest possible competence in fundamental skills, understandings and appreciations.

C. History

During the latter part of the nineteenth century, the leadership of the Seventh-day Adventist Church realized a unique problem -- the training of the youth within its organization. The Seventh-day Adventist school system began in various locations. It has grown over the years, from its humble beginnings, until currently, the system is the second largest parochial system, the largest Protestant school system in the world. This represents, worldwide, 4,301 elementary schools; 775 secondary schools; 35 work-training schools; 83 colleges and universities -- for a total of 5,194 schools.

In Canada, there are 86 elementary schools; 8 secondary schools; and 1 accredited college. There are 282 teachers and 2700 students.

D. Membership and Make-up

The vast majority of students attending Seventh-day Adventist schools come from Adventist families who are members of the local sponsoring church. Although we are finding increasing interest on the part of non-Adventists, whose needs are not being met by public school systems, to send their students to our schools, we do not discourage their attendance. However, our system was developed to meet the needs of the Seventh-day Adventist youth, so that non-Adventists attending our schools will receive the same training as members.

The churches that have schools in their districts choose Board members from their constituents. These Boards meet on a monthly basis to make Board level decisions aiding the principals and teachers of the schools, and they can make recommendations to the local Conference in matters of personnel and development.

The teachers within this system are taken from a pool of prospective teachers (church membership is mandatory). The local Boards agree upon the one(s) that meet the local needs, and then the local Conference will hire those teachers. It is the responsibility of the local Conference and higher levels of Administration for payroll and benefits. The teachers are in-serviced and supervised by the Conference Superintendent(s). They are provided between 5 and 7 in-service days per academic school calendar. The teachers, upon retirement, receive sustenance from the National and World headquarters.

E. The Role in Saskatchewan Education

As Seventh-day Adventists in education, we feel our role in the Saskatchewan education scene is to continue to meet the needs of our church membership; to be able to train our youth to achieve the philosophies and goals we have set; to provide the best opportunities for our youth. We do not see our role as being a threat to the public and separate school systems of Saskatchewan. There may be individuals from those systems that will take advantage of our system, but in general, we are wishing to be able to train our youth in ways that will prepare them for the joy of service on this earth, and a greater joy of service in the world to come.

What activities do we undertake in the performance of this role? Through our worldwide system, we are continually evaluating and developing new programs to meet the needs of our students and their teachers. We will continue to supervise and train our teachers so that they can excel in their profession, and give our students the very best education possible. We wish to meet not only denominational certification requirements, but also provincial certification requirements.

F. Agreement and Disagreement with Public Schools

We agree with the public schools' philosophy of providing the very best education for the youth of Saskatchewan. However, we feel in the context of our own beliefs, that our youths' needs cannot be met within this system.

The curriculum for our schools includes all of the experiences a student has at school. Adventist educators accept the revealed will of God as the most important curriculum source. Since every subject is in some manner a disclosure of Him, effort are made to present each one from a Biblical perspective. This perspective views man as a participant in the great controversy (between God and Satan). It does not look at man and his world as the central theme, but makes a knowledge of Christ and His work paramount. Such knowledge will enable students to discover God in every phase of study and to experience the joy of a loving relationship with Him.

We wish to be able to continue to administer our system of education within the Province, exceeding provincial levels of expectancy and accountability. However, we do not wish legislation to prescribe the manner in which we achieve our philosophies or goals.

Appendix 20

Statement and Attitude on Education

Church of God in Christ (Mennonite) Schools

December 12, 1989

A. Introduction

Because children are born into our care, God demands that we dedicate to Him those entrusted to us. "Lo, children are an heritage of the Lord . . ." (Psalm 127:3). Since children are begotten under our supervision and care, it places upon the parents the responsibility to teach the principle of obedience. "Train up a child in the way he should go and when he is old, he will not depart from it" (Proverbs 22:6). "And, ye fathers, provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord" (Ephesians 6:4). So we see that the knowledge of the Lord and the Holy Scriptures, shall be taught. Deuteronomy 6:7, referring to the commands of God says, "And thou shalt teach them diligently unto thy children . . ." The need for discipline is pointed out by Proverbs 22:15, "Foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him."

The Scriptures teach us that we have the grave responsibility of implanting conviction in our children; we are to prepare them for the future. This will aid them to become Christian men and women who will lead quiet and peaceful lives in all godliness and honesty; being an asset in their communities and nations as respectful citizens.

B. Historical and Present Belief, and Scriptures Which Bear On This Important Issue

Godly men from early times have stated that God was their source of wisdom and knowledge (Proverbs 2:6; 9:10). Jesus Himself, and Christians in the early ages, expressed themselves concerning this important issue (I Corinthians 1:26 - 29; 3:19).

Edward Gibbon in *The Decline and Fall of the Roman Empire*, on page 166, speaks of the early Christians and their attitude toward education stating, "Early Christians despised all knowledge that was not useful to salvation." Anabaptists and Mennonites at various times have also expressed themselves against higher education. They believed that money and education were a snare to them. The Church of God in Christ, Mennonite, has given expression concerning this issue at various times. Following are a few:

General Conference, 1909, Article 5:

> In regard to high school and colleges - we believe that they are no means to the promotion of Christianity. Therefore we are opposed to their attendance, in so far when they are conducted with pride and highmindedness so that impure and false doctrine is taught and practised.
>
> But we do acknowledge that speaking, reading and writing grammatically and properly is profitable, when done in Christian simplicity and humility. (Acts 4:13).

General Conference, 1967, Article 13:

> Resolved: (a) That because of the dangers inherent in TV education, the Church shall continue to carefully watch developments, and study alternatives for further consideration . .

General Annual Meeting, 1976:

> Resolved: That to avoid being captured by the spirit of higher education, we do not use our church school system or our Board and Teacher's meetings to get us into a cycle of higher education. But rather endeavour by humility and wisdom from above to fill our place in life in harmony with our Conference decisions. We also feel that we should not ask our teachers to have more formal education than is taught in our own schools.

C. Our Concern as to the Present Day Public Schools

Looking at the public schools of today, we have a feeling of apprehension as we see the trends and conditions that are prevalent. We feel the disregarding of God and His Word and an attitude of permissiveness have brought about an environment that is not conducive to Christian principles and morals. For example, the issue of physical education and sports, where the children must wear gym suits or be in a general state of undress, is not in harmony with the Bible when it speaks of modest apparel (I Timothy 2:9). We also find there is disrespect for authority (I Peter 2:17), there is a drug problem (I Corinthians 3:17), profanity is being used (Exodus 20:7; Ephesians 5:4), atheism and evolution, which are directly opposed to in the Bible, are being taught (Psalm 5:1; Genesis 1,2). Sex education (Ephesians 5:12), which should be taught with reverence in the home and church, is being taught on an open basis. These, and possibly more, we feel are vivid signs of the deterioration of biblical principles in public schools, which clearly justify our decision to operate our own schools.

Since the Scriptures warn us of the dangers of wicked and ungodly influences, we feel it is our duty to afford our children protection in this area.

D. Why We Believe Our Parochial Schools Answer Our Needs

1. We try to provide an environment in harmony with the standards set forth in the Bible.

2. We endeavour to teach our children humility, as well as respect for God, the Church, higher authorities, laws of the land, parents, and each other.

3. We use books and texts which promote the traditional trend in education and which will be free from atheism, evolution, profanity and sensuality. We feel that we are giving our children an acceptable standard of basic education that will enable them to live useful lives in our communities.

4. We provide instructors who may not be certified, but who are qualified and born again, are spiritually sound, and will teach nothing that is contrary to our church doctrines and principles. We feel this type of instruction will help prepare our children for eternity.

Appendix 21

Presentation on Behalf of the Society Schools

Sharon Foreman

November 28, 1989

A. History

The three schools I represent have been grouped in one category because they are all administered by societies, but they actually came into being independently. They are not linked administratively in any way. After they were in operation they discovered one another and their similarities.

In the late 1970s, people in all three communities became concerned about similar issues in education. They had recognized the absence of the Christian base that had once been the undergirding of the Protestant school system. Now, purged of Christianity, there were many things that mitigated against Christian values. It must be stressed that these people were not looking for help with religious instruction. They were frustrated with dealing with more and more influences in the schools that worked against what they were trying to do in the home.

Attempts were made to influence the public system since it was indeed supported by all Saskatchewan families and should logically be able to accommodate the Christian faith. Because of little success, each group then investigated becoming an independent Christian school under the public umbrella.

Regina Christian School people spent five years placing submissions before the Board of Education before giving up. In Saskatoon, parents had discussions with the Board, the Director of Education and others but requests there too were turned down. It is significant that another Christian group has continued negotiations and are still being refused. In North Battleford, research was done on the Boards' receptivity to the concept across Canada. The disappointing track record along with a perceived lack of local Board understanding on crucial issues propelled people to proceed with forming an independent school. Heritage Christian School in North Battleford is now in its tenth year of operation, Saskatoon Christian School in its seventh and Regina in its sixth year. Heritage is a K-9 school; the others are K-8.

All three schools are interdenominational. For most churches it was not feasible to begin their own schools. Interest crossed denominational lines. There was also support for the concept that the cross denominational aspect was healthy as people majored on important values they held in common.

All these schools chose to use Saskatchewan curriculum and provincially certified teachers. Classrooms are set up in the typical manner. All three schools now supplement with some resources from various Christian publishers.

Regina and Saskatoon schools have ties with a network of schools called Christian Schools International. In that connection, their teachers attend conventions and seminars to gain further training and to share ideas. The three schools join together each spring for a Tri School Track and Field Meet. All three consider extensive parental involvement an important part of the operation of the schools.

B. Philosophy and Goals

Each school has its own statement of these. Some are quite lengthy. Therefore, I will share some significant excerpts:

Ultimate reality is centred in God Who created all things, and Who is the purpose for which all exists. Man is made in God's image, different in kind from all other creation, with the unique capacity to know and respond to God personally and voluntarily. In all of life, his ultimate purpose is to glorify God.

Our total process of Education, therefore, must seek the restoration of our students to the position of true knowledge, righteousness, and holiness in Christ by developing and relating the whole person to God. Our children should be challenged to achieve their full potential spiritually, mentally, socially and physically. Since all truth is God's truth, the Bible is the key to integration and learning.

The Bible gives parents the authority and responsibility for education and holds them responsible to train their children to know and love God, and to do His will. The school, therefore, functions as an extension of the home to aid parents in educating their children.

Education is the nurture (development) of the whole person as created in God's image. Because God created all men in His image, each person is of value. Furthermore, God shows that He continues to value the individual by embracing him personally and individually in His love. God's self-sacrificing love extends even to the person with the least desirable qualities. As well, each person is capable of feeling (emotion), choosing (will), thinking (intellect) and self-awareness.

This implies we teach the value of the individual: each person is of worth not because of what he can or cannot do but because he was created by God. Emphasis on personal development, self-esteem, sane estimates of self and sexuality, attaining self-direction and self-responsibility and developing ways of handling personal stress should be made.

The purpose of Christian schools is to educate children for a life of obedience to their calling in this world as image-bearers of God; that this calling is to know God's Word and His creation, to consecrate the whole of human life to God, to love their fellowman, and to be stewards in their God-given cultural tasks.

Standards of excellence are of fundamental importance to Christian education. All gifts and abilities come from God and should therefore be valued. Each student should have the opportunity, and be encouraged, to develop to his fullest potential.

C. Membership and Operation

Membership in each school's society is open to people who are in agreement with the purposes of the school and the statement of faith. From this membership a Board of Directors is elected to whom the staff is responsible. Annual, as well as other business meetings, are held. Each school independently developed its own constitution and bylaws.

The make-up of the student body crosses denominational and economic lines. Various ethnic backgrounds are represented as well as there being a rural/urban mix.

D. Role in Saskatchewan Education

Each of the three schools see their role in Saskatchewan education as providing a Protestant Christian alternative in schooling for families who wish it. We see ourselves as real schools, not toy schools, with a wish to provide a high quality program in a caring environment within the framework of a Christian world view.

While none of the groups wanted to leave the public system, but were compelled by conscience to do so, they have consciously chosen not to dwell on the negatives. Their wish is to co-operate and co-exist with other schools and to have a good working relationship with the Department of Education. They discussed the beginnings of the schools with Department officials and have welcomed visits by Directors when those were assigned to them.

Our presence on the Saskatchewan education scene has shown that alternatives are healthy. One obvious reason is that everyone is happier and can co-exist peacefully. Most significantly, children can be more relaxed in a learning environment in harmony with their own values. Christian parents can now expend their energies in positive ways instead of trying to effect change in an unresponsive public system or to re-educate at home.

Public officials can proceed without hassle. A second advantage of an alternative is that the public system is now more sensitive to those parents still in the system so they may be treated with more consideration than before. Although cost makes it a prohibitive alternative, everyone knows that it is there.

An alternative also gives a community a chance to test whether it is really operational. Broadminded people from all school systems need to join hands in the common pursuit of excellence in education. Diversity simply keeps us all on our toes.

We all find alternatives useful when buying groceries, clothing, cars, choosing churches or selecting the advantages of alternatives in education.

E. Regarding Public Schools

Agree	**Have Difficulty With**
We need well trained teachers in our schools because our children are so important.	We, along with boards, directors and teachers in the public system have difficulty with the fact that there seems to be a problem in rewarding the very good teachers or in weeding out the less good. Families must depend on chance as to which they get and cannot have input in choosing. Also, there is no "moral means test" when one enters or leaves teacher training. These days, no one dares ask lifestyle questions - after 3:30 it is not supposed to matter; yet role model is important to us.
Agree with alternatives within public school system such as fransaskois schools.	There is difficulty with the idea that only one's ethnic or cultural background could be grounds for an alternative. Surely, one's moral values and world view are as significant as one's ethnic background.
Agree with public system that the state has an interest in having a literate population. Therefore, it must appropriate funds for education so that all may participate.	There is difficulty with "education for all" having to fit into a rigid framework. Various distinctives can be part of the education scene. If we alienate a segment of the population who still wish to be parents, the public system loses people who could be their best allies.
Agree with free universal education. All children are equally important so public funds should support it. All children are of value. They form the next generation.	There is difficulty with the fact that caring about education of each child ends if he is compelled by conscience to leave the public school system. Is he now *less* important? Are some children more valuable than others? Should some children have microscopes and not others? Should some people have attractive classrooms while others study in basements?

People need to consider whether changing structures are needed for changing times. We need visionary, not reactionary thinking. While *Truth* is timeless, structures need to change with the times. (E.g. Churches may need to adopt different styles of worship or times and places of meeting together. These changes do not spell the demise of religion. Nor would fresh thinking about how to operate in a pluralistic society mean the demise of education.)

Appendix 22

Presentation on Behalf of Saskatchewan Employers, Apprenticeship and Training

Wendell Dent

December 12, 1989

A. Goals and Philosophy

A number of organizations speak on behalf of the business community in Saskatchewan, including:

- The Chamber of Commerce (Saskatoon and Regina, Saskatchewan, and Canada)
- The Canadian Federation of Independent Business (Saskatchewan and Canada)
- The North Saskatoon Business Association (Saskatoon)

Saskatchewan employers, apprenticeship and training -- both individually and collectively, through the above organizations -- have a number of goals:

1. To Help Existing Businesses Thrive and Grow

The above organizations help businesses with business problems, provide information, and bring in visiting speakers to enhance our firms' positions with new product data, new business methods, financing, and business efficiency.

2. To Help New Businesses Get Started

Generally speaking, individuals starting new businesses have worked previously for someone else, usually in the same area of expertise. In most cases, when they attempt to start out in their own enterprise and put together their own business, they have not actually had the experience of running a company. While to some extent they must learn by trial and error, they can also learn from the experience of individuals who have successfully started businesses.

Individuals need to know the following things, among others, about starting a new business:

(a) Money and knowledge and where to obtain them;
(b) Credit ratings and loans to purchase product and pay wages;
(c) Working with the number of government agencies they have to deal with;
(d) Hard work and long hours;
(e) Paying taxes and bills on time;
(f) Overhead expenses, including office rent, vehicle, employees, telephone, taxes, license, lawyer, and accountant.

As owners, individuals needs to realize that they are the last ones paid and they are the ones who must solve the inevitable problems that arise.

The whole family is generally and necessarily involved in each new business at the start, since most businesses are started from home with very little capital. The husband works outside and the wife looks after the office and family. The children are also expected to help to launch a successful business. If they do not have the finances, the couple will have to approach the bank for an additional mortgage on the home, sell the second vehicle if there is one, borrow money from a friend, or work at another job outside the home until the business is profitable.

The owners of business must select their management carefully, as well as their employees, secretaries, accounting and warehouse personnel, and sales force. The employees must be picked for their expertise and knowledge of the job. On-the-job training will take place for new and existing employees in order to keep them updated on product and application. Surviving in the business world is an ongoing learning process.

Business people who have successfully fought the hard battles of business have a wealth of information to pass on to those who need it. We are presently attempting to establish a training course to train prospective entrepreneurs to the ways of the business world.

3. To Help Train New Personnel for the Business World

The particular goals of apprenticeship and training are to train new personnel to become journeymen and women in the trades sector representing 32 trades.

Depending on the trade, an apprentice takes three to four years to become a journeyman. The greatest part of this training (roughly 80 percent) is provided on the job or work site. The federal government (11 percent) and the provincial government (9 percent) pay for the rest.

Classroom instruction is given on subjects that cannot be taught on the job site such as mathematics, physics, chemistry, blueprint and specification reading. Apprentices generally attend a training institute for eight weeks a year during their four years of training.

Through advisory boards, the Director of Apprenticeship and his staff in conjunction with business decide what courses and instruction will be given to apprentices in each field. Business works with these institutes to make sure that the students are appropriately trained for Saskatchewan and Canadian markets.

Journeymen within their own jurisdiction teach subjects such as building codes, bylaws, and inspection. These people have a practical teaching certificate to carry out instruction. Manufacturer's training personnel also give new product exposure.

Apprenticeship training is hands-on-training. The journeyman and apprentice must keep up with day-to-day information. They must keep updated with the industry since product and installation are changing rapidly.

Business is heavily involved in the training of apprentices, since apprentices must know about time cards, coding, specifications for projects, type of equipment, shop drawings, and how each part of the job fits together.

The mechanical trade, which is where I am from, will handle the mechanical division of a building project. We include the following trades within our scope: plumbers, pipefitters, gasfitters, sheetmetal workers, welders, and builders of automatic controls and sprinklers for interior fire protection. The mechanical contractor employs six of the seventeen building trades.

Other trades include electricians, bricklayers, floorlayers, concrete installers, acoustic ceiling installers, insulators, structural steel workers, reinforcing steel workers, and carpenters. The general building contractor will employ all of these trades to build a new or renovated building.

B. Interface With the K-12 System

Obviously, the K-12 educational system is preparing students for the workforce, since businesses recruit most of their new employees from the K-12 system.

Among other things, businesses look for the following in new employees:

- Have they received a good education? What were their grades?
- Are they knowledgeable of legal and accounting systems?
- In what type of job or position are they interested?
- What is their idea of the job functions involved?
- Can they look after their own finances?
- How did they present themselves at an interview?
- Was their appearance neat or sloppy?
- How did they respond to questions? Did they answer directly?
- When growing up did they cut the lawn, wash the car, dig the garden, wash windows, etc. without being asked or receiving payment? In other words, were they interested in working?
- What were their school activities outside the prescribed curriculum?
- Did they have a part-time job while attending school, and did they keep it?
- Is their first question, "How much do I get paid and when is my first pay cheque?"

Business requires individuals in the workforce who are self-starters -- people who can work on their own after receiving instructions, who can see what has to be done and do it without continuous supervision, who can solve problems as they arise, and who can foresee problems before they happen.

New employees must realize that training does not stop at grade 12. They require additional and continuous on-the-job upgrading in order to keep up to date with the changing market. They must understand this in order to find their place in the workforce. Properly trained students with a good attitude and a competitive spirit will succeed in the workforce.

Students should be able to use calculators, computers, and word processors. They should also know how to use their own computer (i.e. their own brain) when electronic equipment fails. In other words, they should be able to add, subtract, multiply, divide and square root without using electronics. How many store clerks have we seen who cannot count out change for their customers when the cash register fails?

While in school, students should be prepared to take business seminars and training programs *that are not* within their school day. These would be in the evening or on weekends. Those who take more interest in many subjects outside their school studies prove out as better employees. Among other things, this additional training enhances their communication skills.

The world is changing rapidly. We are involved in the global market. Our efficiency must excel if we are to keep up and provide jobs for our students. Our high standards of living will continue to exist only if we are prepared for it.

C. Role in Saskatchewan Education

I would like to see employers, apprenticeship and training become more active in the K-12 education system, and become more concerned about the operation of the schools and the subjects taught. Are the teachers efficient and knowledgeable? Do they and the students understand the necessities required for the job market?

The school day and year should be simulated to the work day and year of the workforce. Students should be prepared with knowledge that is usable in the business world. We, as business people, should be available to the education system as consultants to assist in training future personnel to enter the world of commerce.

D. Views with Respect to Public Schools and Independent Schools

1. Public Schools

Obviously, there are some problems at the interface between the public system and the business world.

We realize some of the blame rests with business; we have not been working as closely as we should with the school system and informing educators of what we can offer to students. It is essential that such a partnership should take place, since the students need to know what types of jobs are available for them, as well as the subjects, training, and attitude that are required for these jobs.

In Saskatoon, the two school boards spend 55 percent of our city tax dollars. As business people, parents, and taxpayers, we scarcely know whether this money is being spent wisely and efficiently, or whether the public system is covering the occupational needs and training required for our society.

But the public education system has also failed to talk to the business community, to determine what job opportunities are available, to determine what businesses are looking for in their new employees, to find out what students are interested in, and to advise students on the potential markets.

We know a certain amount about the public schools, although it is not enough and a better understanding is necessary.

Businesses require students:

- who are capable of handling the following subjects: reading, writing, mathematics, physics, chemistry and the arts;
- who will listen and communicate with others;
- who are interested in their occupation;
- who have a desire to succeed;
- who will read business publications, manuals, bylaws, laws, financial data, and who will understand and question this information;
- who have developed good home and school habits, i.e. punctuality, reliability, willingness, and positive thinking.

The public school system must teach personnel and business financing, including credit cards, budgets, mortgages, and capital cost. They should also know how to deal with financial institutions, such as banks, trust companies, insurance firms, and general business.

Educational systems must supply students with good educational qualities and with the proper attitude to make our firms more competitive in the business market. Yet, all too often, businesses find that they must provide new employees with re-instruction in the same subjects taught already in the public system. Why is this necessary?

While the public schools can never teach everything a person needs to know in business, the public schools can and should teach students to search out what they need to know on their own initiative.

2. Independent Schools

We have scarcely heard of the existence of independent schools. In most cases, people and business know very little about them and where they fit in. What is it that they do for education and how do they function? On this Advisory Board, we are hoping to learn additional information so that we may inform others of their existence and what we have learned about them.

Appendix 23

Curriculum Issues From an Independent School Perspective

Sharon Foreman

December 12, 1989

A. Introduction

Today I appreciate the opportunity to share some thoughts on curricula. In twelve years of involvement with independent school issues, this is the first opportunity that I have had to discuss the topic with representatives of all the various groups who care about education in Saskatchewan at the same time. However, I also do it with some reluctance as it is very difficult to re-open this very painful chapter of my life.

I must stress I did not enter this arena by choice. When I was faced with educational issues through my children's schooling, the results of my research were not only a great shock to me, but they changed my own and my entire family's lives. What I say today is born of my own experiences and perceptions. However, during the past twelve years, right up to the present, I keep encountering parents with the same concerns and experiences. Therefore, I believe there may well be some common reasons why people continue to leave the public system and set up independent schools.

As I stressed at our last meeting, for many parents, that was not their initial wish. They tried first effecting changes, second investigating alternatives under the public umbrella, and only finally decided they must, for conscience sake, and at a great cost, leave. That was the case for me.

One might well wonder why parents would do such a thing. There appears to be a real lack of understanding of the reasons for the sudden boom of independent schools in the last ten or fifteen years.

Perhaps some personal background is relevant. Education has long been very important to my family and me. I was a successful student in Saskatchewan schools, winning scholarships and beginning Teachers' College at 16. I am a teacher from a family of teachers. Four out of six of my family became teachers, while a fifth married a teacher. I know the issues and problems teachers face in our society and I know too that teachers, like my brothers and sisters and me, are simply people like everyone else in our society.

My family is also very aware of what education looks like from a trustee's point of view. My husband is the third generation in his family to serve on a Saskatchewan public school board. Both of my grandfathers and my father were trustees also. This represents not so much a tradition as a commitment to the importance of education.

Another vantage point on education comes from being a parent. I made a conscious decision to channel my time, abilities and training into a career of family. Such a choice was made at some financial cost as well as teaching as a career. Because of this choice and its costs, I naturally have an earnest wish to be aware of what my children are learning and what effect it will have on their lives. May I stress we are not troublemakers but are supportive of the school, attending meetings and helping out where possible.

B. Some Perceptions About the Provincial Curriculum

Because the issue of curricula is recognized by all of us here to be very important in schools and because "provincial curriculum" appears to be an essential for some, I would like to share some perceptions about it.

1. What is Provincial Curriculum?

This term means quite a different thing than it did when I began teaching. Presumably, it will mean something else again in ten years. So we cannot look at a body of material and either agree or disagree that it is appropriate. Does provincial curricula mean locally developed courses, or not? As curricula are revised, what people and which special interest groups will be successful in influencing their content? So it is difficult really to say what "provincial curriculum" means.

2. What is the Philosophy of the Provincial Curriculum?

Perhaps an even more significant question is what is the philosophy of the provincial curriculum. Content flows out of philosophy. Content cannot be separated from philosophy. Since it appears there is no clearly stated philosophical base, one must rely on perceptions and infer philosophy from things like goals and content.

Last meeting, Murray Scharf's opinion was cited that the philosophy of the provincial curriculum was becoming secular humanism.[1] At the *Kotelmach* trial another University of Saskatchewan professor, Robert Carlson, was asked his opinion of the philosophy of the Saskatchewan curriculum. His reply was "eclecticism" or a "mish mash" of philosophies in an attempt to find a compromise among different ones.[2] This answer might remind one of the description of the *Directions* process.

One might wonder if the "mish mash" answer were true, whether the provincial curriculum actually takes into account those differing philosophies of the people being served. Or does one particular philosophy win out? One would expect the answer to show up in the content.

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[1] Testimony before the Saskatchewan Tax Assessment Appeal Board, July 14, 1987.

[2] Testimony in Saskatchewan Provincial Court, May 26, 1988.

Most of us would agree that at some stage in our history the Christian philosophy did predominate in the schools and the books used reflected that. Also, most would agree the Christian philosophy does not predominate now.

The term "secular humanism" meant nothing at all to me twelve years ago. But I did understand the teachings of Christianity based on the Bible. As I encountered situations and materials in my children's education, I sensed contradictions with the Biblical view. I then discovered that humanism has a "bible" too, a statement of faith and ideals of its own.[3] Unfortunately, I was beginning to see more materials that conformed to the humanist's "bible" than to the Christian's Bible.

For information's sake, may I give a brief summary of the teachings of each?

The Bible says that man was created in God's image, that there was a beginning to man's history, as well as an end, with interventions by God on his behalf throughout that history. Marriage and the family were His ideas. This life is a prelude to the next one. There is not only a purpose for life on this planet but an accountability for sin and a need for a Saviour. Our bodies belong to their Maker and whatever is done in word or deed should be done to glorify Him.

The *Humanist Manifesto*, by contrast, regards the universe as self existing and not created. Religion has been developed by man himself. Faith in the "prayer hearing God" who "loves and cares for persons" is unproved and outmoded. There is "no credible evidence that life survives the death of the body." "Ethics is autonomous and situational, needing no theological or ideological sanction." The humanist strives "for the good life here and now". There is "no divine purpose or providence for the human species".

Obviously, people from a Christian world view would have some difficulty in using a curriculum flowing out of a secular humanist base and adapting it for their own use. Similarly, people with a secular humanist world view would have difficulty using a Christian curriculum and putting their own coating on top. Clearly, philosophy will dictate goals and content.

It is significant that the *Goals of Education for Saskatchewan* include spiritual goals, as follows:

1. Seek an understanding of the purpose and worth of human existence.
2. Develop a knowledge of God.
3. Respect family, religion, and culture in a pluralistic society.

One might speculate on how those goals are to be put into operation in the typical Saskatchewan public school (leaving aside the separate schools): In which classes? Through which teaching strategies? In which books? They sound fine as goals but they need to find their way into actual content to become operational. Were these goals ever meant to become a real part of the provincial curriculum?

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[3] *Humanist Manifestos I and II* (Prometheus Books: 1973). The *Humanist Manifest I* first appeared in *The New Humanist* (May/June 1933), and the *Humanist Manifesto II* in *The Humanist* (September/October 1973).

It is my perception that provincial curriculum is developed by people like you and me. Their own biases and world views are necessarily reflected in the work they do. The inclusion and exclusion of certain groups will affect the outcome. Window dressing by adding certain groups or people is not significant unless they actually have input into the direction things are going. In short, "provincial curriculum" is not inspired and is not above all question. What is "gospel" at one time falls into disrepute and is no longer considered good. People make decisions on curriculum on the basis of what *they* think. Opinions might well vary.

Unless there is sensitivity in curricula to *all* Saskatchewan people, it is impossible to expect they can all use the same curriculum. Therefore, there needs to be a good deal of leeway, either in the definition of provincial curriculum, or in reaching a common standard but using different tools based on different philosophies.

3. Who Takes Responsibility for Provincial Curriculum?

Directors, school boards and teachers feel if the Department of Education has passed something, they should not have to scrutinize or defend it. So, in general, they don't. They trust provincial curriculum. One might wonder what safeguards are actually in place to protect children from fads, influence of pressure groups, or inappropriate choices?

C. The Provincial Curriculum and Independent Schools

The move to independent schools was partially caused by provincial curriculum. For example, family life programs at various grade levels are a clear indication of moral relativism.

New editions of readers, as well as books selected for literature courses feature more and more occult, scary, crude or depressing content. For a generation already haunted by threat of a nuclear war, environmental disaster, and family breakdown one might question its value. To the standard answer "This is realism," one might reply, "For whom is it realism? How would it help those people? What effect does this have on young people? *Which* people want this for their children?"

The new social studies curriculum is another issue. The loss of history concerned many teaching in the universities and public schools as well as the Christian families who left the public schools.

D. Other Difficulties

Other difficulties people encountered were not perhaps written into provincial curriculum but were combined signals to parents that their only choice was independent schools. Some would include:

- Large scale preparations and stress on Halloween;
- Magic circle;
- Death education;

- Values education;
- Choice of music played in classroom;
- Ouija boards;
- "Dungeons and Dragons";
- Book selections for reading aloud to class;
- Lifestyle modelling -- teachers;
- Playground climate -- blind eye to swearing and bullying;
- Censoring out of worthy poetry, literature, and science facts;
- Passing fads tried out on children;
- Influence of speakers on teachers, e.g. Laurier Lapierre (Saskatoon Teachers' Convention, 1980);
- Influence of groups, often publicly funded, who are successful in influencing either curricula or special programs in schools.

E. Curricula Used by Saskatchewan's Independent Schools

The establishment of independent schools in Saskatchewan is part of a North American trend, beginning in the United States, in response to real, not just perceived changes in the underlying philosophy of public school curricula. To begin with, Christian schools attempted to adapt public school curricula to their own needs. But, finding this increasingly difficult, schools began to search for and to create alternatives. Christian publishers began to respond to this demand.[4] Most of these publishers now have Canadian distributors or affiliates.

Saskatchewan's independent schools have taken various routes in choosing curriculum. Denominational schools have found materials from their own denominations. Others have chosen an entire curriculum based on Christian philosophy. Others have made substitutions in provincial curricula with materials from a variety of publishers. Naturally, most schools have not had the time, money or manpower to produce curricula themselves.

F. Conclusion

The trends that precipitated the move to independent schools have been accentuated these past ten years. We see nothing that seems likely to reverse them in the future. There is deep concern about what "provincial curriculum" will mean in the future. Agreeing to its use is like signing a blank cheque.

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[4] See Appendix 13.

Appendix 24

Teacher Issues from an Independent School Perspective

David Wells

January 9, 1990

A. Some Perceived Philosophical Differences Between Public and Independent Schools

Our schools have a fundamental, philosophical difference which separates them and makes them uniquely different from the public schools. I would like to share some perceived philosophical differences to illustrate this point.

1. Different Perspectives on What is Religion

Public schools appear to view religion as another subject or class such as "Christian Ethics". It is viewed as less and less important and relevant to the scientific age in which we live and therefore no longer important in the field of education. God, if people believe in Him at all, is some impersonal "being" or "force" who has little practical relevance to our daily lives. Therefore there is little or no time devoted to religion in the public school classroom.

Independent Christian schools view religion totally different. God is viewed as a personal God who is intimately involved in the affairs of man and therefore very relevant. Therefore religion is not just another subject or another class; it becomes foundational to everything that is taught in a Christian school.

We have a different world view than the public schools. Our view doesn't change the facts about the world in which we live, but it does change the way we see those facts, which can make a big difference in the way we respond to the world in which we live.

2. Independent Schools Educate from God's Point of View Whereas Public Schools Educate from Man's Point of View

In his book, "Who Needs God", Harold Kushner speaks of the change in religious viewpoint that has taken place in society in the last century. He illustrates the different way of viewing events with the following example:[1]

> When Samuel Morse invented the telegraph more than a hundred years ago, his first words sent by wire were "What has God wrought!" When Neil Armstrong stepped onto

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[1] (New York: Summit House, 1989), pp. 53-54.

> the moon in 1969, his first words were, "That's one small step for man, one giant leap for mankind."

Notice who gets the credit and who gets left out, when it comes to twentieth-century marvels.

Independent schools deliberately educate from God's point of view. Public schools, not necessarily from design, but at least by default, educate from man's point of view.

3. Different Perspectives on Moral Education

Independent Christian schools teach their students that there are such things as true and false, right and wrong, and good and evil that are neither situational nor simply matters of personal taste. We teach our students to think in terms of opposites. If something is right, then its opposite is false; if something is right, then its opposite is wrong.

It is our perception that public schools, instead of talking in terms of opposites, now talk in terms of "values". This is particularly evident in the public school family life curricula and social studies curricula. Terms like "right" and "wrong" appear as matters of conscious choice and decision. It is our opinion that the idea that one can and should choose one's values arbitrarily, eventually leads to moral relativism, which says that one value system is as good as any other.

4. The Role of the Humanities vs. the Social Sciences

The humanities (e.g. history and literature) and the social sciences (e.g. economics, psychology and sociology) address the same basic questions -- such as "Who are we?" "Where have we come from?" and "What is the meaning of life?" -- but by different methods. In a classical liberal education, the humanities played a central role introducing the students to what the great minds and talents had thought and produced in the way of philosophy, literature, and art.

Independent Christian schools take the classical liberal education approach. The teaching of the humanities plays a central part in our educational program along with a clear emphasis on traditional history. We also have a strong Biblical emphasis in this area of our instruction. We view history from a Biblical point of view and some of our literature is Biblically centred.

It is our perception that the humanities play a less prominent role in public education today while the social sciences play a stronger role. For example, in her "Christian Critique of the University of Saskatchewan's College of Education Undergraduate Teaching Program", Dawn Beaudry confirms that the new social studies curriculum, grades 7, 8, and 9, takes a strongly social scientific approach.[2]

We also perceive that the public schools seem deliberately to omit or at least to downplay such major cultural forces as the Christian church and the Protestant Reformation in the development of Western civilization.

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[2] See Appendix 25, pp. 202-203.

5. Different Perspectives with Respect to Sex Education

Independent Christian schools believe that one cannot separate the philosophy of education from the content of education -- the teaching of morals and ethics from the teaching of academics. This is especially true in the teaching of sex education. The Christian viewpoint of sex is that it is holy. Teaching the mechanics of sex separate from Christian moral values is offensive to our Christian beliefs as well as the basic nature and instinct of man.

We believe that it is important for the church, school and home to be saying the same things on this vital issue. We perceive that in certain areas the public schools have taken over some functions that are more appropriately those of the home on the argument that parents are reneging on their responsibilities in these areas. This may be the case, and the public schools may therefore deem it appropriate to take over this area. However, our approach is for the church to teach the parents of their responsibilities in this area rather than for the school to handle it. We are able to take this approach in a church-school situation where the church, school and home are working together. This is characteristic not only of the area of sex education but of other areas as well.

6. Different Perspectives on the "Basics" and on Academic Education

Among the characteristics of independent schools as revealed by the Dirks, Ens, Erickson, and Coleman studies, it is reported that:

> Independent schools tend to be more academically oriented. They tend not to offer as wide a range of courses as public schools, particularly with respect to vocational and other non-traditional programs.[3]

We share this perspective. The reasons for this are both economical and philosophical. Economically, we do not have the funds to offer as wide a variety of courses as the public schools do. Philosophically, we believe that we put greater stress on teaching our students the basic academic skills and disciplines than we perceive the public schools are doing.

7. A Different Perspective on Diversity

We perceive the philosophy of public education to be "inclusive" -- a desire to include everybody. By contrast, independent Christian schools might be considered exclusive; but not in the negative sense of elitist. We are exclusive, not in a racial or socio-economic sense, but rather in the fact that we regard our schools as an extension of a Christian home. We recognize that our schools are not for everyone.

We are concerned that the public schools, in their eagerness to include everyone at almost any price, may have thrown away the philosophy that the public schools once rested upon. As a result, we perceive the public schools to be floundering philosophically as they grope around trying to replace the old with the new. We are afraid that this produces a lowest common denominator type of education that lacks the fibre and strength which a good educational system ought to have.

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[3] See Appendix 14, p. 92.

Implicitly if not explicitly, by default if not by design, the public educational system will in fact come to be based on some philosophy of education, such as secular humanism, that will effectively exclude some people on the grounds of conscience from participating in it. In the view of independent Christian schools, this is the situation at which we have presently arrived. The fact that we have left the public school system should not be viewed as a negative thing. In a truly pluralistic society it is impossible to include everybody in one system of education. It does not work to try to impose any one single philosophy of life on the people of an entire state. Enforced conformity is something that impoverishes our society and produces social discord. For this reason, we find the very concept of a single school curriculum for all schools in Saskatchewan to be very unsettling for this represents a very powerful force in the direction of conformity and the suppression of legitimate dissent.

Diversity is not a bad thing. We do not view our schools as being in competition with the public schools, but as complementary to the public schools, fulfilling a specific need for our parents and children, which the public schools by their own admission are unable to fill. From a societal point of view, the existence of such diversity is clearly beneficial.

B. Independent Schools as Community Schools

Our schools are community schools not based upon geographic location but rather rooted in the Christian philosophy. This point is graphically illustrated in Donald A. Erickson's study entitled *Characteristics and Relationships in Public and Independent Schools*. His *Gemeinschaft* model of an independent school in comparison with the professionalism model of a public school effectively communicates the major characteristics and differences between the two.[4]

We can draw two major conclusions from this study concerning independent schools:

(1) If you try and impose the elements of a professionalism model school on a *Gemeinschaft* model school, you destroy the latter. I am not arguing against the professional model school; it works provided you have government funding.

(2) The concept of community underlies the whole operation of *Gemeinschaft* school including the role and duty of teachers. In a *community* school, the role of the teacher is to fit into the community concept of the school and flow with its philosophy. The allegiance of the teacher is to the community, not to the profession of teaching.

Our community schools are undergirded by a strong Christian philosophy. The teachers would be responsible to uphold the religious standards and moral values consistent with the Christian philosophy and moral values of the home and the school. They would have to demonstrate these same qualities in their personal lives and in their conduct in the classroom. They would be responsible to provide a high level of academic instruction and exercise good classroom control. Since the teachers stand in the place of the parents, it is important that they teach and handle students in a consistent manner in accordance with the values and standards of those parents.

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[4] See Appendix 14, pp. 106-112.

C. How Independent Schools Hire Teachers

1. Qualifications of Teachers

Hiring good teachers is one of the most difficult things about operating an independent school. In this respect, independent schools operate under somewhat different constraints from public schools. These are as follows:

(a) Teachers' salaries are considerably lower, with no pension plan. This generally means hiring teachers who are not breadwinners, but rather second income earners in a particular family.

(b) The teachers must share the same faith and practice of the parents and the children in the school. In the context of a church school, this generally means that the teachers must be members of the parent church, or if recruited from outside, must be willing to become members of the church. However, being a member of the parent church alone is not sufficient. Not only their faith, but also their practice must be exemplary. Since the basic underlying purpose of a Christian school is to transform children into the image of Christ (Romans 8:29; Romans 12:2), teachers must be Christ-like role models. The life of the teacher comes through in the teaching.

(c) The teachers must enjoy working with children.

(d) The teachers must be able to work as a team with the principal and other teachers.

(e) The teachers must be qualified, professionally and academically, to be teachers.

We are not saying that public schools, in hiring teachers, do not look at the potential teacher's personal lifestyle and characteristics -- items (b), (c), and (d) -- but it would be our impression that public schools generally look first at academic and professional qualifications, item (e), and secondly, at personal lifestyles and characteristics.

Independent church schools generally look at personal lifestyle and characteristics first, and at academic and professional qualifications second. The inability to pay the same salary and the particular concern about personal lifestyle and characteristics significantly reduces the population from which potential teachers can be selected. To require all teachers to have a Saskatchewan professional teaching certificate prohibitively reduces the population from which to select teachers, particularly when we are not persuaded, for reasons outlined below, that graduates of our Colleges of Education are even adequately or appropriately trained to teach in Christian schools, in particular, independent church schools.

2. Erickson Study -- *Gemeinschaft* Model vs. Professionalism Model

To impose mandatory certification on Gemeinschaft schools is unjust and restrictive to their operation and survival. Teachers do not work in these schools for the same reasons as teachers work in public schools. To force teachers in a *Gemeinschaft* school into a professionalism mode of training without the good salaries and benefits (impossible without funding) is to impose undue hardship on these schools.

3. Teacher Certification and Quality

We do not perceive that teacher certification is a guarantee of quality for our independent schools, for what is a certified teacher? We perceive the answer to be someone who has been trained in one of Saskatchewan's two Colleges of Education to teach in the public system. We do not necessarily feel that this type of training is ideal for our teachers. Teacher certification courses do not necessarily guarantee that a person is going to be an effective, competent instructor. There are certified teachers that are incompetent and uncertified teachers that are excellent instructors. It is our perspective that being a good teacher depends far more on the natural gifting of the person; attitude; work ethic; subject knowledge; experience; willingness to learn; etc. than it does on theoretical teacher education courses.

4. Regulations and Funding Go Hand-in-Hand

Independent schools must oppose cost-increasing regulations that do not obviously increase the quality of our programs. This is a general principle that doesn't apply only to the teacher qualification issue. Because independent schools are not being funded, the government's controls on independent schools cannot be as great as those on public schools.

5. Teachers Should Be Qualified

We agree that teachers should be qualified. The real question, however, is what qualifications are most appropriate for particular situations. The qualifications for a teacher to teach in an independent church school are different from those in a public school. At the elementary level, students of the College of Education simply do not learn much about working with an individualized competency-based learning system like ACE. At the secondary level, we would generally prefer teachers who have academic training in the basic academic subjects. We would prefer to hire a teacher with an honours B.A. than a B. Ed.

To teach in our classrooms, teachers and monitors must be trained to function in a classroom that is centred around individualized instruction. This training takes place at special seminars designed for this purpose as well as through an apprenticeship program.

D. Perceptions with Respect to Teacher Training at the Two Colleges of Education

A number of our teachers have recently graduated from the province's two Colleges of Education, and other students in the two Colleges attend some of our member churches. In order to express our concerns to the Advisory Board, SAICS commissioned one of our teachers, who is a recent graduate of the College of Education at the University of Saskatchewan, to write a paper on the College of Education's undergraduate teaching program.[5]

First Dawn Beaudry discusses major North American trends in teacher education such as values education, social studies, psychology, and science. Then she analyzes teacher education at the University of Saskatchewan within this wider context, including explicit teachings on faith, knowledge, religion, and Christianity, and implicit teachings on secular humanism. By comparing what she was taught with respect to religion, morals and ethics, values, and sex education with the *Humanist Manifesto*, she concludes that "the College of Education has become, in effect, in practice if not by design, a theological seminary of secular humanism."[6] Therefore she seriously questions whether the College of Education is providing appropriate training for teachers in a Christian school. We would also question this.

E. Conclusion

It is obvious that there are some major fundamental differences between public schools and independent schools. This is true concerning their basic underlying philosophy and also their mode of operation. These differences have to be taken into consideration when evaluating the qualifications of teachers working in independent schools. To insist that all teachers be certified is inflexible and creates a great deal of difficulty for the reasons discussed above.

At the present time we look for the best qualified teachers we can find. Our teachers must be active professing Christians. They must be good role models; have subject expertise; be trained in the teaching methodology used in our classrooms; and be able to uphold the philosophy and standards that we desire in our schools.

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[5] See Appendix 25.

[6] *Ibid*, p. 208.

Appendix 25

A Christian Critique of the University of Saskatchewan's College of Education Undergraduate Teaching Program

Dawn Beaudry

September 1989[1]

Foreword

> If you are taught day and night, either explicitly or by presupposition, that in the end of ends there is nothing except matter in motion; that we are essentially dust and to dust we shall return; that truth, even with a small "t", does not exist; that nothing is certain, nothing secure; that the last word is what Whitehead calls process, the welter, flux, passage; that philosophy is only a matter of linguistic analysis; that all metaphysics is nonsense; that the great issues of life and death, of being and becoming, of suffering and destiny, of knowledge and truth, which preoccupied Plato, Aristotle, Augustine, Saint Thomas, Kant and Nietzsche, are so many linguistic obfuscations which can be readily demonstrated as nonsense by linguistic analysis; that essentially life has no meaning; that if life has any meaning it is to eat and drink and be merry; and to extend your power and control; that all values are relative to custom and culture; that there is no absolute beauty, no absolute justice, no absolute love, no absolute mercy; that morality is private or at best situational; that right is ultimately only what you can safely get away with; that man is essentially his dreams and drives; that the judgment that might is right is the deepest and most determinant insight in politics; that politics and economics alone determine the course of history; that freedom in art is to disfigure the human figure (Picasso); that God is man or matter or reason or the will or technology or nothing; and that the God of religion, if he exists, is irrelevant; and not only that; but if you have also to pass examinations on all these themes, and, if you are writing a doctoral dissertation; to pore over the voluminous literature of such teaching for years; then, is it any wonder that, after eight or ten years (the most formative in your life) of such rigorous drilling in the university, you become thoroughly brainwashed into the rationalist-relativist-naturalist-Freudian-sophistical-monistic-immanentist-atheistic cast of mind? And parents wring their hands and complain about what is happening to their children; and thinkers keep on only "thinking"; and leaders wonder at the decadence all around them and perhaps also in them; and churches appear unconcerned, except to continue preaching the gospel, as though there was not also such a momentous thing as the independent problem of the university with which they, too, and in the name of the gospel itself, should be concerned!

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[1] This was commissioned by the Saskatchewan Association of Independent Church Schools for presentation to the Minister's Advisory Board on Independent Schools. It was presented to the Board by Dave Wells on January 9, 1990.

> A Christian critique of the university must point out the absence of Jesus Christ from the curricula of the humanities. This absence is today so much taken as a matter of course that even to hint at it is to provoke the wrath of the humanities and to invite a thousand learned rebuttals. A Christian critique is presumably carried out by a Christian, and a Christian stands in the presence of Jesus Christ. How can a Christian critic fail to notice the conspicuous absence of that in whose presence he constantly lives and moves and has his being? The university, a world of thought all by itself entirely apart from Christ? Christ to be relegated merely to family, to the church, to private feeling? He is wholly to be forbidden entry into the halls of learning of the greatest universities? This is the issue.[2]

I. Introduction[3]

The university is one of the most powerful and influential institutions in Western civilization. More than the church or the government, the university dominates the world today. Government leaders, church leaders, professionals such as doctors and lawyers, and men of the media are university trained. Those people who are not graduates of the university are indirectly influenced either by a teacher who was, or by the media. This is true of the University of Saskatchewan, whose College of Education directly impacts what is taught in public schools through its training of education students. Because of the influence it has, it is legitimate to analyze what the University is teaching its undergraduates -- the future teachers in Saskatchewan's schools.

II. The College of Education, University of Saskatchewan, in the North American Context: A Summary of Major Trends

To begin this critique of the College of Education at the University of Saskatchewan, I review some of the major trends in education in North America. These trends generally reveal how

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[2] Charles Habib Malik, *A Christian Critique of the University* (Downers Grove, Illinois: InterVarsity Press, 1982), pp. 91-92. Charles Malik, a Lebanese, is Jacques Maritain Distinguished Professor of Moral and Political Philosophy at the Catholic University of America. Between 1945 and 1959, he served at various times as the President of the United Nations General Assembly, President of the Economic and Social Council, President of the Security Council, Chairman of the Human Rights Commission, and Chairman of the Third Committee of the General Assembly which elaborated the final text of the Universal Declaration of Human Rights, 1948. He is the only person in the history of the United Nations to have presided over five major organs of the United Nations.

[3] I was a student in the College of Education's secondary program from 1984 to 1988, but have talked to students in both the elementary and secondary program in writing this critique. Since graduation, I have been teaching at the secondary level in an independent church school in Saskatchewan.

Christianity has been removed or is in the process of being removed from the public schools, and that the philosophy of public education, whatever it now is, is certainly not Christianity.

That the philosophy of education of the great Western universities and public school systems was originally Christian is beyond dispute. The motto of Harvard University is "For Christ and the Church", that of Freiburg University, "The Truth shall set you free", and that of the University of Saskatchewan, "For God and Country". "Their founders saw the universities as a means of glorifying God and of serving mankind through the pursuit of truth in submission to Jesus Christ, the Truth."[4] Both Horace Mann, the father of American public education, and Egerton Ryerson, the father of Canadian public education, also believed that the philosophy of public education should be Christian. School was where children learned basic Christian doctrines and values; church was where they learned to be Anglican, Presbyterian, or Methodist.

Today, this is clearly not the case. The reasons for the change are far beyond the scope of this critique, but in the United States, recent interpretations of the First Amendment by the U. S. Supreme Court have clearly played a role. In addition, the American Civil Liberties Union (ACLU) and its prominent attorneys like Leo Pfeffer, have had a major influence on the views of the Supreme Court.[5] Over the past fifty years, the United States Supreme Court has worked out a doctrine of official religious neutrality that may be expressed in the formula:

> Neutrality = strict secularity of public institutions + little or no public financial aid to religious institutions + lessening of public restrictions on individual moral choice.[6]

Without passing judgment on whether the ACLU and the Supreme Court have been leading American society in this direction or simply reflecting the changes in American society over this period of time, clearly these decisions have had an impact on or have at least been coincident with changes in American (and Canadian) public education.

A. Values Education

The traditional way of teaching Christian values in North American public schools was by precept and example. But as early as 1947, the historian C. S. Lewis, was perceptive enough to notice that things were changing, on both sides of the Atlantic – that public education was attempting to become value-neutral.[7] In the 1960s and 1970s, the changes became a maelstrom. In 1966,

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[4] Malik, *op.cit.*, p. 9.

[5] William R. Marty, "To Favour Neither Religion nor Non-Religion: A Problem in Pluralism," Department of Political Science, Memphis State University, Memphis, Tennessee, 1987, p. 1.

[6] Francis Canavan, "The Impact of Recent Supreme Court Decisions on Religion in the United States," *Journal of Church and State 16*, Spring 1974, pp. 217-236.

[7] C. S. Lewis, *The Abolition of Man* (New York: Macmillan Publishing Company, 1947). He argued that education could not in fact ever be value-neutral, and that the attempt to be so would

Raths, Harmin, and Simon published their book, *Values and Teaching: Working with Values in the Classroom*[8] and in 1972, Sidney Simon produced his handbook, *Values Clarification: A Handbook of Practical Strategies for Teachers and Students*,[9] which became the standard reference work of "values clarification", the most popular of the three new approaches to the teaching of values.[10]

The proponents of values clarification argued that traditional approaches to the teaching of values were "totalitarian" because they asserted to children that there were "right" and "wrong" ways of thinking and acting.[11] Such approaches only served to arrest the development of a child's rational judgment, the values clarification theorists said. As an alternative, they proposed that public school teachers should attempt to free children from the previous generation's conceptions of right and wrong by assisting them to develop their own set of values.

How they proposed to do this was to train teachers to stimulate discussion of moral issues by presenting students with hypothetical situations in which students were forced to make moral decisions. Whether the discussions were about theft or lying, or "lifeboat" games, teachers were to treat all answers as acceptable answers, thus demonstrating that any standard, or even no standard, was acceptable. In this approach,

> "right" and "wrong" are entirely relative depending on the situation and especially on the child's point of view at any given time. Most important of all, the child must be free to choose his or her own moral values without the encumbrances of adult "no-nos".[12]

B. Social Studies

Three recent studies of American social studies textbooks, by individuals and organizations on both the left and the right of the American political spectrum, have revealed that the treatment of religion in America in these textbooks is seriously deficient, and that the way in which censorship

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be ultimately destructive of our civilization, hence the title of the book.

[8] (Columbus: Charles E. Merrill Publishing Company, 1966).

[9] (New York: Hart Publishing Company, Inc., 1972).

[10] The other two major approaches are the moral reasoning approach associated with Laurence Kohlberg and the reflective approach of Clive Beck. See Kathleen Gow, *Yes Virginia, There is a Right and Wrong!* (Toronto: John Wiley and Sons Ltd., 1980), for a description of these three approaches.

[11] *Ibid*, p. 14.

[12] *Ibid*, p. 13.

or bias shows is by omission: by leaving religion out.[13]

For example, in forty of the leading social studies textbooks for Grades One through Four, there was not one word that referred to the presence of religious behaviour as part of today's American life.[14] If students were to learn about the place of religion in American society purely from their textbooks, they would conclude that religion essentially disappeared from American life after the Civil War. Even the treatment of the colonial and revolutionary periods is far from adequate. One book described Pilgrims as "people who take long trips." Intentionally or unintentionally, American social studies texts presently convey a secular world view.

In addition, Paul Vitz discovered in his study that Protestant Christian values, such as the importance of family, were treated in a biased way in these same textbooks. In the treatment of the family, a family was never defined. Marriage was not mentioned as the foundation of the family, or as an important institution. In fact, the words "marriage" or "wedding" did not occur in the books researched. Neither did the words "husband" or "wife".[15] Also missing was a positive portrayal of a mother or housewife as a way of living that was either useful or of intrinsic dignity. While many kinds of "alternative lifestyles" were paraded through the pages of these textbooks, a traditional understanding of the family was simply absent.

C. Psychology

This omission of references to the traditional family is consistent with other trends in psychology that have been assimilated into the mainstream of North American psychology, counselling, and education, which Paul Vitz discusses in another one of his books, *Psychology as Religion: The Cult of Self-Worship.*[16] The major American self-theorists reviewed in this book -- Carl Rogers, Erich Fromm, Abraham Maslow, and Rollo May -- all advocate an openness to sex which includes extramarital relations. In *Open Marriage*, a best-seller in this school of thought by Nena and George O'Neill, sexual fidelity is redefined, eliminating the elements of duty and obligation, which are seen as threats to love, growth, and trust.[17] Notions of duty and sacrifice in parenthood are also rejected by today's popular self-theory counsellors and therapists.

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[13] Paul C. Vitz, "Censorship: Evidence of Bias in United States Social Studies Textbooks", *The New Saskatchewan Social Studies Curriculum: Progress or Regress?* (University of Saskatchewan Symposium, May 1988), p. 37. The other two studies which confirm this result were conducted by People for the American Way and Americans United for the Separation of Church and State.

[14] Vitz, *op.cit.*, p. 35.

[15] *Ibid*, p. 38.

[16] (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1977).

[17] *Ibid*, p. 34.

Selfist philosophy is aligned with the theoretical bias against parents taught in various schools of psychotherapy, which has existed since Freud's postulate of the Oedipus Complex. The Oedipus Complex is something a son may experience around the age of four, when an intense hatred between father and son may develop as a result of jealousy over the fact that the father is married to, and sleeps with, the son's mother. Between daughters and mothers the same phenomena is called the Electra Complex.

Children are regarded as intrinsically good, with negative influences attacking them from the outside. Psychological therapy has people re-trace their history in search of the negative parental actions that are causing emotional stress twenty years later. This theme of hostility to the parent "has prevailed for so long that it has become second nature for today's therapists and patients as well."[18]

It goes without saying that such emphasis on the independent, mobile individual is at variance with the Christian perspective of the family, which involves definite roles for the father, mother, and children. As "sexist" language is being removed from school textbooks, textbooks are by default teaching against the family values that Christian parents are trying to instil in their children.

Vitz's harshest allegations of the self-theorists are reserved, however, for their attempt to dress up their value system in scientific clothing.

> By keeping the name "psychology"... and by vaguely suggesting ways in which self-theory might be tested, selfism has falsely benefited from the prestige and generally acknowledged special truth value accorded to any science.[19]

True science cannot verify any value, but self-theorists have attempted to use the authority of psychology as a science to give their concepts and values a scientific truth status. On the other hand, when Christian interpretations of human behaviour are presented as providing a reasonable, observationally grounded synthesis of the problems of self, this is seen as an arbitrary and unacceptable intrusion of religion into science.[20]

D. Science

While true science has nothing to say about the validity of one religion or world view as opposed to another, the way in which science is increasingly being presented, in the media and in the schools, has generally been decidedly secular.

> [Science] does not get to ultimate questions, it does not go back to beginnings, it presupposes naturalistic explanations. To say that science is atheistic is a tautology.

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[18] *Ibid*, p. 88.

[19] *Ibid*, p. 55.

[20] *Ibid*, p. 56.

> That does not mean that God does not exist. Science does not and cannot get to that question. . . But it does mean that, taken by itself, its impact is secular.[21]

The evolutionist-creationist controversy is the classic, but not the only example of this phenomenon. Deep down, both sides recognize, even if the general public does not, the central nature of the issue, for natural selection provides a non-teleological account of the apparent design in the universe. Yet, as evolutionists debate among themselves about the adequacy of natural selection to account for evolution, they are reluctant to admit to outsiders that evolution may have become – like selfism – a belief system at its foundation unamenable to scientific proof or refutation.

Meanwhile, the Christian foundations of the modern scientific revolution, beginning in northern Europe, have been largely forgotten. Some prominent, non-Christian scientists acknowledge that Christianity was indeed a necessary pre-condition for modern science, for Christianity created the climate in which it was rational to investigate how the universe functioned.[22] But could most of today's scientists, who have lost sight of these beginnings, even have started the scientific revolution?

In his surprising best-seller, Allen Bloom argues, among other things, that these attempts to address all issues in a supposedly scientific fashion have led to a pervasive relativism in educational thought and practice, both in the universities and the public schools. Instead of teaching the Western ideas and beliefs that brought our society to where it is, these institutions now treat all truth as relative and all values as equal. Gone is the pre-occupation of classical liberal education with the philosophical search for truth. Such openness actually results in conformism:

> Out there in the rest of the world is a drab diversity that teaches only that values are relative, whereas here we can create all the life-styles we want. Our openness means we do not need others. Thus what is advertised as a great opening is a great closing. No longer is there a hope that there are great wise men in other places and times who can reveal the truth about life – except for the few remaining young people who look for a quick fix from a guru.[23]

As our universities and schools have strived for openness to all things, including an openness to all value systems, in the process, we have become closed to ourselves, where we came from, and who we are.

The above mentioned are some of the major trends in education today. Some have been established as fact, such as the removal of Christianity from American textbooks, and the widespread use of values clarification in values education. Other trends, such as selfism, using the authority of science as a clothing for different belief systems, and the striving for openness leading to closemindedness, are allegations. The discussion of these trends, however, does not necessarily establish that these trends have taken over teacher education at the University of Saskatchewan, but, on the face of it, it would seem unlikely that our University could have escaped altogether the influence of these trends.

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[21] Marty, *op.cit.*, p. 6.

[22] J. Robert Oppenheimer, "On Science and Culture", *Encounter* (October 1962), p. 5.

[23] Allen Bloom, *The Closing of the American Mind* (New York: Simon and Schuster, 1987), p. 34.

III. An Analysis of Teacher Education at the University of Saskatchewan Within This Wider Context

A. Explicit Teachings on Faith, Knowledge, Religion and Their Interrelationships

In my experience at the University of Saskatchewan, virtually all professors who addressed these subjects said that education should be value-free. To avoid indoctrinating students, our professors told us that teachers should never present a certain belief system, or philosophy, while teaching. The question whether education could in fact be value-free – whether content could be separated from philosophy -- was rarely addressed, however.

In Educational Studies 100.6, a required class that is an introduction to the role of the teacher, the school milieu, the behaviour of children, and other related topics, our professor discussed different classifications of knowledge such as Mathematics, History, Aesthetics, Philosophy, Moral Knowledge, and Religion. These were "old" categories of knowledge, though. Religion was no longer considered a form of knowledge because there was no way of scientifically testing for truth in religion, and intelligent educated people were noted for testing the truth. Supernatural religion was a thing of the past; intelligent people looked for human knowledge, discovered scientifically by man, not knowledge "revealed" by God.

Overall, the view of knowledge espoused in the teacher education program at the University of Saskatchewan was rationalistic. Man was regarded as an autonomous being who had, on the basis of reason alone, to formulate universal truths that would lead hopefully to human progress. This rationalistic foundation effectively eliminated at the outset Christianity as a basis of knowledge from any further discussion, since rationalism denies the existence a reality beyond what we can observe with our five senses. Again, students were encouraged to see supernatural religion as a thing of the past, and to look to knowledge discovered by man instead of knowledge revealed by God.

In an another context however, in an educational foundations course, we spent a large amount of time discussing whether or not religion should be taught in school, in view of Canada's once having been a Christian nation, and in view Canada's present claim to be a multicultural nation. The argument was advanced, but quickly discarded, that Christianity should be taught because schools were places of enculturation (that is, places where values and customs were taught) and because Christianity was the most formative religion in our culture. Instead, we were told that students should be challenged to grasp the intellectual aspects of life, and that therefore religion should be done away with. The assumption that Christianity was anti-intellectual was clearly made.

In a class entitled "Education in International Perspective", we studied theories of modernization and development and their effects on education in Third World Countries. To gain an understanding of underdeveloped countries, our professor gave us a list of cultural characteristics of underdeveloped nations, of which the first was the existence of traditional value systems. As an example, the professor said that people in Sri Lanka would stop working in order to talk about spiritual things. Such emphasis on spiritual instead of material things was said to be "backward". The clear implication was that such an emphasis among individuals in Canada was also backward.

Another cultural characteristic of underdeveloped countries was their deference to age and seniority, which was said to be the reason why young people in the Third World were not able to advance in life. Respect for authority, which is also a Christian value, was described as a backward mentality. Again, the clear implication was that such attitudes among individuals in Canada were also backward.

One student pointed out that if, as teachers, we encouraged our students to question everything they heard, including the moral instruction of their parents, we would, in effect, undermine our own authority as teachers in the classroom. The professor answered, "Your students will not reject you; they will only reject your power and authority."

Freud's Oedipus and Electra Complexes were explained in great detail in educational psychology classes. What we were taught was consistent with Carl Rogers' self-theories, whose ideas, as mentioned previously, have been assimilated into the mainstream of American psychology, counselling, and education. Modern knowledge had rendered Christianity and other traditions permanently out of date. A corollary of this doctrine was that the intelligent believer would eventually rebel from the faith. Abandoning one's "religious background" was reliably assumed to be a rational consequence of getting an education.

Yet, this assumption was never systematically investigated in a manner motivated by an honest desire for understanding spiritual or religious truth, which one might expect from the university, given the lofty ideals it professes.[24] Nor were criticisms of self-theory as pseudo-scientific -- mere ideology masquerading as science -- ever acknowledged.

One professor described man's search for himself in the following way. He explained that the purpose of education was to bring out the reality of what the world is and how each individual is related to the world. This included three questions:

1. Who am I?
2. What is reality?
3. How do I relate to what the world is?

Yet these questions were never actually answered throughout the course. With hindsight, now that I have taught in a Christian school for a year, during which time I have learned to teach from a Christian point of view, I feel that he could not answer these questions because he lacked a basic understanding about faith, knowledge, religion, and their interrelationships. Scientific investigation and knowledge alone can not answer these great questions. Whatever is said or taught about these questions is said from some philosophical point of view. All people have some sort of faith, religion, or world view, explicit or implicit, within which they think.

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[24] This point is also made by Vitz, *op. cit.*, p. 77.

B. Explicit Teachings on Christianity

In the previous section, in the context of the role of religion in education, I gave some examples of how professors in the College of Education dismissed Christianity as a reasonable foundation for an education program. In this section, I give some explicit teachings on Christianity that did the same.

When educational history was discussed in the College of Education, history was regarded as a linear process, always progressing onwards. When historical Christian movements dominated the educational scene, this was regarded as a decline in education. For example, the early church that first challenged and was subsequently absorbed into the Roman Empire was described as retrogressive and narrow-minded.

One professor demonstrated hostility towards Christianity without any apparent reason. He told our class that the term "born-again" had originated when a psychiatrist developed a system of therapy in which she would ask her patients to curl up in a fetal position on the floor, and pretend to re-experience their birth, at which point they could begin their life again, with a fresh start. To those of us Christians, who knew that Jesus himself had said "Except a man be born again, he cannot see the kingdom of God",[25] this was a blatant fallacy. Many non-Christian students, however, ignorantly believed the professor's mocking story. Whom were they to believe -- the professor or us?

C. Implicit Teachings on Secular Humanism

No professor in any of my classes explicitly stated what was the philosophy of education underlying the undergraduate teaching program at the College of Education. This raises two possibilities: either that there was no such underlying philosophy or that there was one, albeit implicit.

The former, however, is not a real possibility for a teacher training program. If a teacher training program did not have at least an implicit philosophy or world view, then how could it coherently order what was taught to its students?

In any event, the undergraduate teaching program at the College of Education clearly does have an implicit philosophy. I intend to demonstrate that, in my experience, its philosophy was secular humanism, by juxtaposing what I was taught with the *Humanist Manifestos I and II*, 1933 and 1973.[26]

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[25] John 3: 3.

[26] *Humanist Manifestos I and II* (Prometheus Books, 1973). John Dewey was one of the signers and is believed to have been the principal author of the *Humanist Manifesto I*.

1. *Attitudes Towards Traditional Theistic Religion*

As I have already indicated, students in the College of Education were encouraged to view supernatural religion as a thing of the past and to look to knowledge discovered by man as opposed to knowledge revealed by God. Intelligent people looked to human knowledge, not "revealed" knowledge, for fulfilment.

Such teachings are consistent with the *Humanist Manifestos I and II*:

> Humanism asserts that the nature of the universe depicted by modern science makes unacceptable any supernatural or cosmic guarantees of human values.
>
> Man will learn to face the crises of life in terms of his knowledge of their naturalness and probability. Reasonable and manly attitudes will be fostered by education and supported by custom. We assume that humanism will take the path of social and mental hygiene and discourage sentimental and unreal hopes and wishful thinking.
>
> Traditional theism, especially faith in the prayer-hearing God, assumed to love and care for persons, to hear and understand their prayers, and to be able to do so something about them, is an unproved and outmoded faith. Salvationism, based on mere affirmation, still appears as harmful, diverting people with false hopes of heaven hereafter. Reasonable minds look to other means for survival.[27]

2. *Morals and Ethics*

Education students take a variety of psychology classes, in which many learning theories are studied as well as topics such as how adolescents develop morals. One professor told the class a story about a group of people in a difficult situation. To get out of the dilemma they generally acted in a way that many people would regard as wrong. The class was asked to list the people in order of who did the most right to who did the least right. Answers differed greatly, as the students analyzed the characters according to their intentions, but even if all different, everyone's answers were right. Right and wrong were situational. The professor denied the existence of a definite right and wrong. Subsequently, I have wondered why we were not asked to categorize behaviour from most wrong to least wrong. This would have made just as much sense.

Such teachings are also consistent with the *Humanist Manifesto II*, which affirms that

> moral values derive their source from human experience. Ethics is autonomous and situational, needing no theological or ideological sanction. Ethics stems from human need and interest. . . . We strive for the good life, here and now.[28]

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[27] *Ibid*, pp. 8, 9, and 13.

[28] *Ibid*, p. 17.

In our Christian school, it goes without saying that we present morals and ethics differently. Consistent with the classical Greeks and with a classical liberal education, we think in terms of right and wrong, true and false, and good and evil, while using the Bible as our standard for faith and practice. Rather than teaching that right and wrong are situational, we teach that the true measure of a person's character is what they do when no one else is looking, and when there is no chance of being found out.

3. *Values*

When discussing the role of the teacher, professors repeatedly warned us to avoid indoctrinating our students with our own beliefs. They saw it as wrong for any adult to inculcate their own values into children, because children should not be bound by their ancestor's concepts of right and wrong. Rather, our role as school teachers was to help the students develop their own set of values. We were never to say that one person's beliefs were better than another's, because one moral view was as good as any other.

That such moral relativism was itself an ethical position, also known as ethical neutrality, was never acknowledged. That we might be indoctrinating them into this value system, that there are no absolutes except the absolute that there are no absolutes, was never suggested.

The very use of the word "values", rather than more traditional concepts like right and wrong or good and evil, indicates a rationalistic orientation to morality "for it construes right and wrong as matters of conscience choice and decision."[29]

The new Saskatchewan Social Studies curriculum for Grade Seven, from which I taught during my internship program, provides an example of this rationalistic approach to morality. At the time, I was really disturbed by what I was told to teach; only later did I really appreciate why I found it so disturbing teaching from this curriculum. The alternative view that moral rules of conduct are part of our social heritage, and that principles of right and wrong are fundamentally historical was never addressed in the curriculum. Was not asking students to choose their own values like asking them to re-invent civilization for themselves? In no other field of education are young people expected to re-invent the subject from their own experience, and there is no reason why we should insist on this in moral education.[30]

But once again, such rationalism is consistent with the *Humanist Manifesto II*, which affirms that:

> Reason and intelligence are the most effective instruments that humankind possesses. There is no substitute: neither faith nor passion suffices in itself. The controlled use of

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[29] Tom Flanagan, "Rationalism and Scientism in the New Saskatchewan Social Studies Curriculum", *The New Saskatchewan Social Studies Curriculum: Progress or Regress?* (University of Saskatchewan Symposium, May 1987), p. 5. Indeed, Flanagan refers to the idea that one can and should choose one's values as "one of the greatest illusions of rationalism."

[30] Gow, *op.cit.*, p. 219.

> scientific methods, which have transformed the natural and social sciences since the Renaissance, must be extended further in the solution of human problems.[31]

The value that appears the most frequently in the Grade Seven social studies curriculum is the value of tolerance towards other individuals. Indeed tolerance is presented as a kind of *summum bonum*, an unquestioned master value about all others. But again, an alternative view of tolerance was never presented in the curriculum. Tolerance is unquestionably an important virtue for life in a liberal democracy, but when it is taught as an unquestioned master value above all else,

> it easily slides into indifference or relativism; and relativism is no sure guarantee of tolerance in the long run. If nothing is held to be true, one may just as well repress dissent as encourage it; it doesn't really matter, since power is the only worthwhile goal. Tolerance, I suspect, can only survive as a conclusion drawn from deeper beliefs about justice and rights, but these beliefs are rarely addressed in the curriculum.[32]

At the College of Education, tolerance as the master value was indeed emphasized by many professors. As teachers, we were taught to teach tolerance by explaining and discussing different world religions, and encouraging our students to be open to all religions and world views. Ironically though, Christianity, the most formative religion in our culture, was not presented as one of the religions of which we were taught to be tolerant!

4. *Sex Education*

In my adolescent psychology class, we discussed, as future teachers of adolescents, the increasing occurrence of sexual activity among teenagers. This was attributed to the facts that teenagers were becoming physically mature at an earlier age than in the past and that the average marriage age was becoming later, and that therefore teenagers would have to wait longer to have sex within marriage. We were told that there was nothing wrong with sex outside of marriage. We were further told definitely not to talk about expected standards of conduct and behaviour. We were to encourage students to search for the truth and to go ahead and experiment.

Again, what we were taught was consistent with the *Humanist Manifesto II*, which affirms:

> In the area of sexuality, we believe that intolerant attitudes, often cultivated by orthodox religions and puritanical cultures, unduly repress sexual conduct. The right to birth control, abortion, and divorce should be recognized. While we do not approve of exploitive, denigrating forms of sexual expression, neither do we wish to prohibit, by law or social sanction, sexual behaviour between consenting adults. The many varieties of sexual exploration should not in themselves be considered "evil". Without countenancing mindless permissiveness or unbridled promiscuity, a civilized society should be a *tolerant* one. Short of harming others or compelling them to do likewise,

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[31] *The Humanist Manifesto II*, *op. cit.*, p. 17.

[32] Flanagan, *op.cit.*, p. 7.

> individuals should be permitted to express their sexual proclivities and pursue their lifestyles as they desire. We wish to cultivate the development of a responsible attitude toward sexuality, in which humans are not exploited as sexual objects, and in which intimacy, sensitivity, respect, and honesty in interpersonal relations are encouraged. Moral education for children and adults is an important way of developing awareness and sexual maturity.[33]

The alternative, Christian view of sex and marriage was never presented, except in a mocking fashion. Biblical Christianity stands for an undefiled marriage bed, speaks against fornication, and describes sex as a God-given gift for a husband and wife. In our Christian school, we do not oppose sex education, but we think it improper, verging on deceit, to teach the biological aspects of sex without also teaching any explicit moral, religious, and spiritual aspects of sex. This lack is a "prejudiced control of the ground rules for understanding sex, which guarantees what is in effect an anti-religious presentation to students as well as facilitating an aggressive desacralization of sex."[34] Again, the avoidance of any religious teachings implicitly promotes a secular value system.

By illustrating how topics such as religion, morals and ethics, values, and sex education were taught in the College of Education, I have demonstrated that implicitly at least, the philosophy of teacher education at the University of Saskatchewan is consistent with secular humanism, and essentially opposed to Christianity. While our professors were telling us not to indoctrinate our public school students with any particular value system, it would appear that our professors were nonetheless indoctrinating us, implicitly, if not explicitly, with secular humanistic beliefs, as described in the *Humanist Manifestos I and II*.

I have subsequently learned that the Dean of the College of Education himself, appearing before the Saskatchewan Tax Assessment Appeal Board, testified under oath that in his professional opinion the philosophy of education of the public schools, leaving aside the separate schools, was becoming secular humanism.

> In many of the programs that are introduced in schools, [the philosophy] reflects secular humanism. And I'm talking about the morals education, the values clarification components of the school curriculum, the life skills that are under new core directions, would -- they'd have their roots in secular humanism. . . .
>
> Much of the curriculum that's been designed, and the way it was designed was by a popularist movement, by holding meetings. Can you accuse open meetings of having a common philosophy? And only if there's a central society based upon one set of value premises can you say from a popularist movement you've derived the philosophy? So, given the method of obtaining the curriculum, one cannot say that there was an espoused publicly stated philosophy underlying the curriculum; it's a popularist statement of what the school should be. If one looks at the curriculum guides though,

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[33] *Ibid*, pp. 18-19.

[34] Vitz, *op.cit.*, p. 109.

> one can say, if you had to look at them and say what philosophy they were derived from, they are derived from secular humanism.[35]

IV. A Problem in Pluralism

Another professor of education was recently asked in a court of law, "In your experience and opinion as an educational philosopher, can you separate philosophy from education." This professor responded:

> Well, if you try to do that – I mean, if you try to remove philosophy from education, you are, in essence, inflicting that philosophy – that there should be no philosophy in education –on to education. So I would say no, you can't do it. . . . I don't think there is such a thing as neutral education.[36]

The analysis of the previous section has demonstrated the truth of this statement. As Christianity has been removed from our universities and public schools, another philosophy called secular humanism has largely replaced it.

How this process has happened is once again far beyond the scope of this paper. But, personally, I have difficulty accepting conspiracy theories. I think that the process has happened so gradually that most people are largely unaware of it. Only when we compare the public schools of 50 years ago with the public schools of today do we realize the extent of the changes that have taken place. Nonetheless, there is such a thing as the spirit of an age, and the spirit of our present age would appear to be secular humanism. Our universities and public schools have gradually conformed themselves to this spirit.

A second conclusion from the above analysis is how pluralism poses perhaps an unsolvable dilemma for the teacher education program at the University of Saskatchewan. One can conceive of the problem in two ways. If secular humanism is not a religion, then the College of Education is favouring non-religion over religion. Alternatively, if secular humanism is a religion, then the College of Education is favouring one religion over another.

Personally, I view secular humanism as a religion. First, the signers of the Humanist Manifesto refer to secular humanism in religious terms. They characterize humanism as "a philosophical, religious, and moral point of view" and as "a general religious and philosophical outlook."[37]

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[35] Murray Scharf, Testimony Before the Saskatchewan Tax Assessment Appeal Board, *City of Saskatoon* v. *Saskatoon Christian Centre Ministries*, July 14, 1987, p. 82-83.

[36] R. A. Carlson. Testimony in Saskatchewan Provincial Court, *Her Majesty the Queen* v. *Andrew and Diane Kotelmach*, May 26, 1988, p. 376.

[37] *Humanist Manifestos I and II*, *op.cit.*, p. 3.

Second, in *Torcaso* v. *Watkins* (1961), the Supreme Court of the United States stated its opinion that secular humanism was a religion.

Third, secular humanism is consistent with the dictionary definition of a religion. According to the Oxford Dictionary, religion is either:

> 1. A particular system of faith and worship; 2. Human recognition of a superhuman controlling power and especially of a personal God or gods entitled to obedience and worship; the effect of such recognition on conduct and mental attitude; 3. A thing that one is devoted to or is bound to do.[38]

As a system of faith, secular humanism is a religion. It is made up of unprovable assumptions, which like theistic faith, are matters of plausibilities and probabilities, not of demonstrable truth.[39]

The solution to this dilemma is not necessarily to remove secular humanism from our universities and public schools like Christianity has been removed. If this were attempted, then either it would be replaced by some other religion, or it would be replaced by no religion at all. But in the latter case, what would be left in terms of curricula and textbooks for public schools?

> Texts with a systematic religious view would be excluded. So would texts with a systematic secular view. . . . It would appear that any text that rises to the level of intelligent coherence, to the level of having a worldview, must be excluded! Only mindless, incoherent, or technical works would remain. This would be the destruction of public education.[40]

The solution is to recognize that there exist valid, alternative systems of faith, that are not contrary to the basic principles for which Canada stands, for ordering knowledge into curricula and textbooks. For schools that use such curricula and textbooks, it might also be necessary to train teachers somewhat differently. One such system of faith is, of course, Christianity.

V. Other Observations on Teacher Education at the University of Saskatchewan

In this section, I make several more relevant observations about teacher education at the University of Saskatchewan.

Christian schools are community schools based on a religious rather than a geographic community. As members of the same church or society, teachers have much closer contact with the parents of their pupils. As part of the same community, we really feel accountable to them for what we are teaching their children. Our professionalism is by no means the key ingredient in what makes our school work.

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[38] *The Concise Oxford Dictionary*, 1978, p. 946.

[39] Marty, *op.cit.*, p. 4.

[40] Marty, *op.cit.*, p. 7.

On the other hand, in the College of Education, we were taught, implicitly if not always explicitly, that our professionalism was what made the public schools work. We were the professionals, parents were ignoramuses. We had the degree to prove it, they did not. We had studied the latest educational theories, they had not. We were liberal, they were conservative. We were open-minded; they were close-minded. Part of our job as teachers was to draw students away from the value system of their parents. One professor actually said that after the first two years, we could "shut the door and do or say whatever we wanted."

Not only the teaching of values but also the teaching of academics has moved away from more conservative traditions. In the College of Education I took a grammar class that was supposed to prepare me to teach high school grammar. However, the professor told the class that there was no sense in his seriously trying to teach us grammar, because we would never use this in a high school anyway. In brief, he told us that students no longer had a grammatical base on which to build and that young teachers themselves did not understand grammar, so why bother trying to teach it? As long as students could express themselves, they would be "alright".

A similar approach was taken in a writing class. In our first class we were given an assignment that was meant to show us that rules hindered creativity. We were given very specific grammatical guidelines to follow while writing a paragraph about our summer. The next day the professor tried to convince us that we probably would have found our task easier, and we would have been more creative, if our minds had not been preoccupied with having to follow the rules. For the rest of the course grammatical rules and the traditional method of teaching writing were criticized. Technical mastery was no longer important, content and ideas were. "Fluency before accuracy" was our new motto, but how could ideas be expressed and accepted if they could not be properly put on paper?

After taking classes about methods of teaching English where I was taught not to bother about teaching real English, the statistics about illiterate high school graduates no longer surprise me. Humanistic statements that "education should be humanized" and "people are more important than rules or regulations"[41] have also taken over the teaching of English at the College of Education and in public high schools.

VI. Implications for the Training of Teachers for Independent Christian Schools

The life of the teacher comes through in the teaching. Therefore, to be truly qualified to teach in a Christian school, a teacher must not only be a Christian, but have an understanding of life from God's point of view as revealed in the Bible, and have a lifestyle that exemplifies Christian beliefs. This is as important, if not more important, than their professional and academic training.

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[41] *Humanist Manifest II*, *op.cit.*, p. 19.

As a Christian teacher with a Bachelor of Education degree, teaching in an independent church school, I have seriously analyzed the value of my Saskatchewan teaching certificate for my present job and what I had to go through to get this certificate. I have found some aspects of the teacher training that I received at the University of Saskatchewan to be useful as a teacher in a Christian school, but these are few in number when compared with what was irrelevant and what was positively harmful.

Two of the classes that I have found the most beneficial are two educational administration classes, the first which explained the history of educational administration and organization in Canada, and the second which provided us with a history of educational ideas from ancient Greece to the present day. My adolescent psychology class in the secondary program, I found to be thoroughly humanistic, but graduates of the elementary program to whom I have talked have told me that their child development classes, particularly the truly scientific aspects of child development, have proven very useful to them in teaching young children. Teaching at the secondary level, my most useful classes have been my Arts and Science classes in English, mathematics, and history.

I do not question whether the College of Education is providing appropriate training for teachers in public schools, but if the College of Education has become in effect, in practice if not by design, a theological seminary of secular humanism, then I really have to question the appropriateness of this training for teaching in a Christian school.

The College of Education is unfairly indoctrinating its students with secular humanism to an extent that many Christian students give up on their faith -- unfairly, because Christian perspectives are rarely if ever presented in an honest, unmocking way as legitimate alternatives. To those who are challenged and survive the experience, perhaps it makes their faith stronger by such a sharp confrontation with opposing beliefs, but how would a secular humanist feel if he had to receive a degree from a Christian college of education in order to teach in a secular humanist school?

Isn't teacher training supposed to prepare students to be teachers -- to build them up, not tear them down? A B. Ed. degree from the College of Education does little, if anything, to prepare students to teach in a Christian school; it does much more to drag them down. I believe it is unfair to require of teachers in Christian schools that they possess a degree in education from a secular College of Education.

Appendix 26

Independent Schools in Saskatchewan

Name of School	Grades	Boys/Girls	Residence	Affiliations
Athol Murray College of Notre Dame Wilcox	9 - 12	Both	Yes	Roman Catholic SAPHS[1]
Caronport High School Caronport	9 - 12	Both	Yes	ACSI[2] SAPHS
College Mathieu Gravelbourg	8 - 12 (French)	Both	Yes	Roman Catholic SAPHS
Luther College (High School) Regina	9 - 12	Both	Yes	Lutheran SAPHS
Lutheran Collegiate Bible Institute Outlook	10 - 12	Both	Yes	Lutheran SAPHS
Rivier Academy Prince Albert	7 - 12	Girls	Yes	Roman Catholic SAPHS
Rosthern Junior College Rosthern	10 - 12	Both	Yes	Mennonite SAPHS
St. Angela's Academy Prelate	10 - 12	Girls	Yes	Roman Catholic SAPHS
Agape Christian Academy Prince Albert	K - 12	Both	No	CFCM[3] SAICS[4]
Christian Centre Academy Saskatoon	K - 12	Both	No	CFCM SAICS
Churchbridge Christian Academy Churchbridge	K - 12	Both	No	SAICS
Cornerstone Christian Academy Meyronne	K - 12	Both	No	AFCM[5] SAICS
Faith Alive Christian Academy Saskatoon	K - 12	Both	No	AFCM SAICS

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[1] Saskatchewan Association of Private High Schools.

[2] Association of Christian Schools International.

[3] Canadian Fellowship of Churches and Ministers.

[4] Saskatchewan Association of Independent Church Schools.

[5] Association of Faith Churches and Ministers.

Name of School	Grades	Boys/Girls	Residence	Affiliations
Full Gospel Christian Academy Frenchman Butte	K - 12	Both	No	ACOP[6] SAICS
Grace Bible Christian Academy Yorkton	K - 12	Both	No	Baptist SAICS
Hosanna Mission Christian Academy Regina Beach	K - 6	Both	No	CFCM SAICS
Kindersley Christian Academy Kindersley	K - 12	Both	No	CFCM SAICS
Lighthouse Christian Academy Glenbush	K - 12	Both	No	SAICS
Living Hope Christian Academy Estevan	K - 12	Both	No	SAICS
Maranatha Christian Academy Regina	K - 12	Both	No	SAICS
Meadow Lake Christian Academy Meadow Lake	K - 12	Both	No	SAICS
Paradise Hill Christian Academy Paradise Hill	K - 12	Both	No	CFC[7] SAICS
Parkland Christian Academy Canora	K - 12	Both	No	SAICS
Prince Albert Apostolic Christian Academy Prince Albert	K - 12	Both	No	ACOP SAICS
Regina Baptist Academy Regina	K - 12	Both	No	Baptist
Swift Current Christian Academy Swift Current	K - 12	Both	No	Interdenominational SAICS
Victory Christian Academy Prince Albert	K - 12	Both	No	Baptist SAICS
Wordshop Christian Academy D'Arcy	K - 12	Both	No	CFCM SAICS
Heritage Christian School North Battleford	K - 9	Both	No	ACSI
Regina Christian School Regina	K - 8	Both	No	CSI
Saskatoon Christian School Saskatoon	K - 8	Both	No	CSI

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[6] Apostolic Church of Pentecost.

[7] Christian Fellowship Churches.

Name of School	Grades	Boys/Girls	Residence	Affiliations
Battlefords Adventist School North Battleford	K - 10	Both	No	Adventist
Curtis-Horne Jr. Academy Regina	1 - 10	Both	No	Adventist
Moose Jaw Seventh-day Adventist Elementary School, Moose Jaw	1 - 9	Both	No	Adventist
Saskatoon Seventh-day Adventist Jr. Academy, Saskatoon	1 - 10	Both	No	Adventist
Selkirk Adventist Elementary School, Quill Lake	1 - 8	Both	No	Adventist
Yorkton Adventist Academy Yorkton	K - 10	Both	No	Adventist
Countryside School Saltcoats	1 - 9	Both	No	Church of God in Christ (Mennonite)
North Star Private School Hyas	1 - 8	Both	No	Church of God in Christ (Mennonite)
Pasquia Hills Christian School Carrot River	1 - 9	Both	No	Church of God in Christ (Mennonite)
Plains Christian Day School Osler	1 - 10	Both	No	Mennonite Conservative Fellowship
Rheinland Mennonite School Osler	1 - 10	Both	No	Old Colony and Bergthaler Mennonite
Swanson Christian School Delisle	1 - 9	Both	No	Church of God in Christ (Mennonite)
Wheatland Christian School Neilburg	1 - 9	Both	No	Church of God in Christ (Mennonite)
Allegro Montessori School Saskatoon	K - 3	Both	No	Montessori
Ecole Beau Soleil Gravelbourg	K - 7 (French)	Both		
Cornwall Alternative School Regina	7 - 9 (spec. ed.)	Both	No	
Radius Tutoring Saskatoon	10 - 12 (spec. ed.)	Both	No	
Schaller School Pilot Butte	5 - 12 (spec. ed.)	Both	Yes	Ranch Ehrlo Society